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- *Investment Theme - Care Coordination:* Today in healthcare, most conditions require the involvement of multiple healthcare professionals, including primary care physicians, specialists, nurses, assistants, and therapists, and the care they provide must be managed closely with participation from the patients themselves and their family members. Unfortunately, poor coordination and information sharing amongst caregivers creates significant inefficiencies at the points of hand-off between providers, leading to repeat tests, missed diagnoses, and expensive mistakes that diminish outcomes, and in some cases put patients at substantial risk. **TigerText** (NLV-II) has developed a secure text messaging platform that can be used on any mobile phone that allows healthcare professionals to rapidly communicate and exchange clinical data files to improve and coordinate care.

- *Investment Theme - Clinical Error Reduction:* Administrative, medication and procedural errors are responsible for billions of dollars of cost annually in the U.S. healthcare system. Many of these problems can be reduced by bringing relevant information into the right setting at the appropriate time. For example, **ePocrates** (Sprout IX, NASDAQ: EPOC – Acquired by athenahealth for $293 million, 3.1x multiple) allows physicians to quickly reference drug formulary, dosing and interaction information, thus reducing the error rate in prescriptions.

Problem Area: Unnecessary Services & Missed Prevention Opportunities

- *Investment Theme - Analytics & Data-Driven Personalization*: Many conditions are currently diagnosed on single or limited data points, measured in the hospital or physicians' office, that may not accurately reflect (or detect) the patients' condition. Examples include diseases with episodic or fluctuating symptoms such as cardiac arrhythmias, Parkinson's, Alzheimer's, depression and other behavioral health issues. **iRhythm Technologies** (NLV-II) developed and markets an innovative, highly wearable, patch technology capable of recording continuous electrocardiograms for up to 14 days. This product has demonstrated a 5x improvement in diagnostic yield for cardiac arrhythmias relative to 24 - 48 hour Holter monitoring.

  The large scale deployment of electronic medical records ("EMRs"), healthcare information exchanges, and diagnostic and monitoring technologies, is driving exponential growth in professional health data around patient care and outcomes. At the same time, patients are discussing and sharing their own health care experiences and personal health data involving providers, therapeutics, and procedures on the internet. These vast and rapidly growing professional and consumer oriented healthcare data sets create an unprecedented repository of longitudinal data on populations of patients. By mining these data sets using big-data techniques and technologies that are being deployed successfully in other industries, it is possible to identify important findings that have huge commercial value that might previously have never have been detected. Specifically, the Fund Managers believe analytics applied to these data sets will allow care gaps to be readily identified and addressed, and best practices to be frequently revised, leading to a consistent iterative cycle of improvement. **Treato** (NLV-II) has developed a social health intelligence platform (aka "Social Listening") that identifies, analyzes and aggregates medical user generated content spread widely across the web

General Partner's return obligation set forth in the preceding sentence; provided, however, that in no event shall any carry recipient be required to return to the Fund an amount in excess of the aggregate distributions made to it that are attributable to the General Partner's "carried interest" less tax distributions with respect thereto.

Management Fee:

The Fund will enter into a management agreement with New Leaf Venture Partners, L.L.C., a Delaware limited liability company, or an affiliate thereof (the "Management Company") to provide management and administrative services to the Fund.

The Fund will pay the Management Company an annual management fee (the "Management Fee") equal to 2.5% per annum of Commitments, payable in advance on a quarterly basis. For each successive twelve-month period beginning on the first day of the fiscal quarter following the date which is the fourth anniversary of the Final Closing Date, the percentage used in calculating the annual Management Fee shall be determined by multiplying the percentage used to determine the Management Fee for the prior twelve-month period by 88%; provided, however, in no event shall such percentage be reduced below 1.35%per annum.

Commitment, Break-Up and Monitoring Fees:

100% of all directors' fees, consulting fees, commitment fees, monitoring fees, investment banking, transaction or break-up fees or other remuneration (excluding directors' fees and options for service on the board of a publicly-traded portfolio company) paid by the Fund's portfolio companies to the General Partner, the Management Company or the Managers ("Portfolio Company Remuneration"), net of expenses, will be treated as an offset to the Management Fee; provided, however, that the Management Fee shall not be reduced below zero. Any reimbursement of the General Partner, the Management Company or the Managers for out-of-pocket expenses incurred on behalf of a portfolio company will not offset the Management Fee.

XII. ADDITIONAL INFORMATION

Legal Counsel

Proskauer Rose LLP ("Proskauer Rose") acts as counsel to the Fund, the General Partner and the Management Company in connection with the organization of the Fund and the offering of Limited Partner Interests therein. Proskauer Rose also acts as counsel to the Fund, the General Partner, the Management Company and their affiliates in connection with investments and ongoing operations of the Fund and other matters. In connection with the offering of Limited Partner Interests and subsequent advice to the Fund, the General Partner, the Management Company and their affiliates, Proskauer Rose will not be representing the Limited Partners of the Fund. No independent counsel has been retained to represent the Limited Partners of the Fund. Investors are advised to seek their own counsel in connection with a prospective investment in the Fund.

Accounting and Reporting

KPMG LLP, independent certified public accountants, will report upon the financial statements of the Fund for each fiscal year.

Availability of Principal Agreements

Prior to the consummation of the offering, the Fund will provide to each prospective investor and such investors' representatives and advisers, the opportunity to ask questions regarding the terms and conditions of this offering and to obtain any additional information required. Any questions or requests for information should be directed to Ron Hunt, New Leaf Venture Partners, L.L.C., Times Square Tower, 7 Times Square, Suite 3502, New York, New York 10036 (T: 646-871-6400).

No other persons have been authorized to give information or to make any representations concerning this offering, and if given or made, such other information or representations must not be relied upon as having been authorized by the Fund.

Copies of the Partnership Agreement and Subscription Agreement for the purchase of Limited Partner Interests will be made available upon request.

Prospective investors are urged to request any additional information they may consider necessary in making an informed investment decision. During the course of the transaction and prior to sale, each purchaser of a Limited Partner Interest is invited to ask questions of the Fund Managers concerning the terms and conditions of the offering and to obtain any additional information necessary or to verify the accuracy of the information furnished in the Memorandum.

Sprout Capital IX, L.P. (Healthcare Technology Portfolio)

$ amounts in millions, as of March 31, 2014
Please refer to Endnotes I,J,K,L,M and N in this Appendix.

Company	Sector	Vintage Year	Total Cost	Realized Value	Unrealized Value	Total Value	Gross Multiple (Realized Portion)	Gross Multiple (Total)	Gross IRR
Realized or Partially Realized Investments									
Adolor Corporation	Therapeutics	2000	$ 29.3	$ 23.5	$ -	$ 23.5	0.80	0.80	-4.2%
Affymax, Inc.	Therapeutics	2001	$ 37.2	$ 17.9	$ -	$ 17.9	0.48	0.48	-11.3%
Aspire Medical	Healthcare Devices	2004	$ 7.4	$ 0.6	$ -	$ 0.6	0.07	0.07	NM
Aspreva Pharmaceuticals	Therapeutics	2004	$ 23.2	$ 151.7	$ -	$ 151.7	6.54	6.54	95.4%
Aureon Biosciences, Inc.	Diagnostics & Infrastructure	2001	$ 34.1	$ 0.8	$ -	$ 0.8	0.02	0.02	NM
Auxilium Pharmaceuticals, Inc.	Therapeutics	2003	$ 23.1	$ 106.3	$ -	$ 106.3	4.60	4.60	37.4%
Corixa Corporation	Therapeutics	2003	$ 42.7	$ 31.1	$ -	$ 31.1	0.73	0.73	-13.2%
eHealth, Inc.	Convergence	2001	$ 12.1	$ 58.4	$ -	$ 58.4	4.83	4.83	26.8%
Epicor Medical, Inc.	Healthcare Devices	2001	$ 9.3	$ 41.8	$ -	$ 41.8	4.49	4.49	78.7%
ePocrates, Inc.	Convergence	2000	$ 17.2	$ 53.2	$ -	$ 53.2	3.10	3.10	10.8%
Focus Technologies, Inc.	Diagnostics & Infrastructure	2000	$ 32.3	$ 84.1	$ -	$ 84.1	2.61	2.61	17.8%
Gryphon Therapeutics	Therapeutics	2002	$ 13.3	$ 0.2	$ -	$ 0.2	0.01	0.01	-60.7%
Ilypsa, Inc. (fka Symyx)	Therapeutics	2003	$ 15.8	$ 109.4	$ -	$ 109.4	6.91	6.91	78.0%
ISTA Pharmaceuticals, Inc.	Therapeutics	2002	$ 42.9	$ 84.6	$ -	$ 84.6	1.97	1.97	10.8%
Kalypsys	Therapeutics	2002	$ 27.4	$ 1.1	$ -	$ 1.1	0.05	0.04	-29.7%
Lathian Systems, Inc	Convergence	2001	$ 7.1	$ 0.0	$ -	$ 0.0	0.00	0.00	NM
Metabasis Therapeutics, Inc.	Therapeutics	2001	$ 23.8	$ 1.1	$ -	$ 1.1	0.05	0.05	NM
NeuroVista Corp.	Healthcare Devices	2004	$ 8.8	$ -	$ -	$ -	-	-	NM
NxStage Medical, Inc.	Healthcare Devices	2001	$ 21.6	$ 45.1	$ -	$ 45.1	2.09	2.09	9.4%
Nyco Holdings ApS	Therapeutics	2002	$ 47.0	$ 222.8	$ 2.7	$ 225.5	4.74	4.80	33.6%
Pharsight Corporation	Convergence	2002	$ 2.8	$ 6.4	$ -	$ 6.4	2.31	2.31	16.2%
Phylos, Inc.	Therapeutics	2000	$ 10.2	$ -	$ -	$ -	-	-	NM
Progen PharmaInc. (Cellgate)	Therapeutics	2003	$ 21.4	$ 0.4	$ -	$ 0.4	0.02	0.02	-49.9%
Protedyne Corporation	Diagnostics & Infrastructure	2001	$ 21.9	$ 3.7	$ -	$ 3.7	0.17	0.17	NM
Radiant Medical, Inc.	Healthcare Devices	2000	$ 18.6	$ 0.5	$ -	$ 0.5	0.02	0.02	NM
Sirna Therapeutics, Inc.	Therapeutics	2003	$ 27.2	$ 219.3	$ -	$ 219.3	8.06	8.06	91.0%
Spiration, Inc.	Healthcare Devices	2002	$ 17.4	$ 14.5	$ -	$ 14.5	0.84	0.84	-2.4%
Tolerx, Inc.	Therapeutics	2002	$ 11.0	$ 1.5	$ -	$ 1.5	0.14	0.14	-23.0%
Triple Point	Healthcare Devices	2004	$ 0.3	$ 0.1	$ -	$ 0.1	0.28	0.28	-48.3%
VascA, Inc.	Healthcare Devices	2001	$ 12.8	$ 0.4	$ -	$ 0.4	0.03	0.03	NM
Visiogen, Inc.	Healthcare Devices	2001	$ 17.9	$ 90.0	$ -	$ 90.0	5.04	5.04	35.4%
VNUS Medical Technologies, Inc.	Healthcare Devices	2001	$ 8.0	$ 22.1	$ -	$ 22.1	2.76	2.76	15.4%
Total Realized or Partially Realized Investments			**$ 645.0**	**$ 1,392.4**	**$ 2.7**	**$ 1,395.1**	**2.18**	**2.16**	**16.8%**
Unrealized Investments									
Expression Diagnostics (XDx)	Diagnostics & Infrastructure	2004	$ 16.6	$ 0.0	$ 3.8	$ 3.8	NA	0.23	-19.4%
Intrinsic Therapeutics, Inc.	Healthcare Devices	2002	$ 26.6	$ 0.0	$ -	$ 0.0	NA	0.00	NM
Labcyte, Inc. (fka Picoliter)	Diagnostics & Infrastructure	2002	$ 10.0	$ -	$ 10.6	$ 10.6	NA	1.06	0.5%
Relypsa, Inc.	Therapeutics	2007	$ 20.3	$ 0.0	$ 50.4	$ 50.4	NA	2.49	23.9%
Sopherion Therapeutics, Inc.	Therapeutics	2004	$ 15.1	$ -	$ 0.0	$ 0.0	NA	0.00	NM
Spinewave	Healthcare Devices	2004	$ 10.5	$ -	$ 3.7	$ 3.7	NA	0.35	-11.9%
Total Unrealized Investments			**$ 99.1**	**$ 0.0**	**$ 68.4**	**$ 68.4**	**-**	**0.69**	**-5.0%**
Total Sprout Capital IX, L.P. (HCT) Investments			**$ 744.1**	**$ 1,392.4**	**$ 71.1**	**$ 1,463.6**	**2.18**	**1.97**	**14.8%**

Sprout Capital VII, L.P. (Healthcare Technology Portfolio)

$ amounts in millions, as of March 31, 2014

Please refer to Endnotes I,J,K,L,M and N in this Appendix.

Company	Sector	Vintage Year	Total Cost	Realized Value	Unrealized Value	Total Value	Gross Multiple (Realized Portion)	Gross Multiple (Total)	Gross IRR
All Investments									
Adeza Biomedical Corporation	Diagnostics & Infrastructure	1996	$ 4.8	$ 27.7	$ -	$ 27.7	5.75	5.75	20.1%
Allos Therapeutics, Inc.	Therapeutics	1998	$ 2.6	$ 7.5	$ -	$ 7.5	2.87	2.87	38.8%
Aradigm Corporation	Therapeutics	1994	$ 2.8	$ 15.3	$ -	$ 15.3	5.45	5.45	39.3%
AtheroGenics, Inc.	Therapeutics	1996	$ 3.8	$ 7.1	$ -	$ 7.1	1.87	1.87	13.7%
AviaHealth, Inc. (fka GoToMyDoc)	Convergence	2000	$ 1.6	$ 0.0	$ -	$ 0.0	0.02	0.02	-92.8%
CombiChem, Inc.	Therapeutics	1995	$ 3.9	$ 9.4	$ -	$ 9.4	2.43	2.43	26.5%
Connetics Corp. (fka Connective)	Therapeutics	1995	$ 6.3	$ 14.2	$ -	$ 14.2	2.24	2.24	15.5%
FemRX	Healthcare Devices	1995	$ 2.2	$ 3.2	$ -	$ 3.2	1.47	1.47	11.6%
Healtheon/WebMD (Sapient)	Convergence	1996	$ 3.0	$ 39.8	$ -	$ 39.8	13.42	13.42	190.1%
Hearten Medical	Healthcare Devices	1997	$ 1.7	$ -	$ -	$ -	-	-	NM
IntraBiotics Pharmaceuticals	Therapeutics	1994	$ 3.9	$ 7.3	$ -	$ 7.3	1.89	1.89	13.4%
Lynx Therapeutics, Inc.	Diagnostics & Infrastructure	1995	$ 1.1	$ 2.9	$ -	$ 2.9	2.72	2.72	25.4%
NxStage Medical, Inc.	Healthcare Devices	2003	$ 3.3	$ 18.9	$ -	$ 18.9	5.80	5.80	20.9%
Orquest, Inc.	Healthcare Devices	1995	$ 5.5	$ 7.8	$ -	$ 7.8	1.42	1.42	6.1%
Pathology Partners	Diagnostics & Infrastructure	1997	$ 3.3	$ 22.4	$ -	$ 22.4	6.82	6.82	38.2%
Pharsight Corporation	Convergence	1997	$ 4.9	$ 7.3	$ -	$ 7.3	1.48	1.48	6.0%
Point Biomedical	Diagnostics & Infrastructure	1997	$ 9.2	$ 0.0	$ -	$ 0.0	0.00	0.00	NM
Prometheus Laboratories, Inc.	Therapeutics	1998	$ 7.8	$ 38.8	$ -	$ 38.8	5.00	5.00	13.4%
Salient Interventional Systems	Healthcare Devices	1998	$ 2.7	$ 0.0	$ -	$ 0.0	0.00	0.00	NM
Skila, Inc.	Convergence	1998	$ 5.2	$ 0.2	$ -	$ 0.2	0.05	0.05	NM
TriPath Imaging, Inc.	Diagnostics & Infrastructure	1996	$ 4.9	$ 13.9	$ -	$ 13.9	2.83	2.83	17.2%
VascA, Inc.	Healthcare Devices	1996	$ 6.5	$ 0.1	$ -	$ 0.1	0.02	0.02	NM
VNUS Medical Technologies, Inc.	Healthcare Devices	1997	$ 4.3	$ 15.7	$ -	$ 15.7	3.66	3.66	12.1%
Xcyte Therapies, Inc. (CDR)	Therapeutics	1996	$ 6.1	$ 0.5	$ -	$ 0.5	0.08	0.08	-33.6%
Total Sprout Capital VII, L.P. (HCT) Investments			**$ 101.2**	**$ 260.0**	**$ -**	**$ 260.0**	**2.57**	**2.57**	**18.6%**

Sprout Growth II, L.P. (Healthcare Technology Portfolio)

$ amounts in millions, as of March 31, 2014

Please refer to Endnotes I,J,K,L,M and N in this Appendix.

Company	Sector	Vintage Year	Total Cost	Realized Value	Unrealized Value	Total Value	Gross Multiple (Realized Portion)	Gross Multiple (Total)	Gross IRR
All Investments									
Adeza Biomedical Corporation	Diagnostics & Infrastructure	1996	$ 3.9	$ 22.7	$ -	$ 22.7	5.75	5.75	20.1%
AviaHealth, Inc. (fka GoToMyDoc)	Convergence	2000	$ 1.3	$ 0.0	$ -	$ 0.0	0.02	0.02	-92.8%
Cephalon, Inc.	Therapeutics	1999	$ 4.1	$ 20.5	$ -	$ 20.5	5.01	5.01	293.2%
Connetics Corp. (fka Connective)	Therapeutics	1997	$ 3.2	$ 6.5	$ -	$ 6.5	2.05	2.05	16.7%
IVAC Holdings, Inc.	Healthcare Devices	1995	$ 0.9	$ 3.0	$ -	$ 3.0	3.31	3.31	121.9%
Pathology Partners	Diagnostics & Infrastructure	1997	$ 2.7	$ 18.3	$ -	$ 18.3	6.82	6.82	38.1%
Total Sprout Growth II, L.P. (HCT) Investments			**$ 16.1**	**$ 70.9**	**$ -**	**$ 70.9**	**4.42**	**4.42**	**43.8%**

Appendix 2

All Funds Gross and Net Returns

$ amounts in millions, as of March 31, 2014

	Gross Basis							
	Gross Cost and Value				Gross Multiple		Gross IRR	
	Total Cost	**Total**	**Realized**	**Unrealized**	**Realized**	**Overall**	**Realized**	**Overall**
New Leaf Ventures II, L.P. (2008)	$358.0	$656.1	$232.4	$423.7	2.01x	1.83x	33.3%	29.6%
New Leaf Ventures I, L.P. (2005)	$304.5	$649.7	$236.2	$413.5	1.72x	2.13x	22.9%	19.1%
Sprout Capital IX, L.P. (2000) (Healthcare Technology)	$744.1	$1,463.6	$1,392.4	$71.1	2.18x	1.97x	16.8%	14.8%
Sprout Capital VIII, L.P. (1998) (Healthcare Technology)	$157.5	$273.7	$273.7	$0.0	1.74x	1.74x	10.1%	10.1%
Sprout Capital VII, L.P. (1995) (Healthcare Technology)	$101.2	$260.0	$260.0	$0.0	2.57x	2.57x	18.6%	18.6%
Sprout Growth II, L.P. (1995) (Healthcare Technology)	$16.1	$70.9	$70.9	$0.0	4.42x	4.42x	43.8%	43.8%

	Net Basis							
	Net Cost and Value					Net Metrics Multiples		
	Fund Size	**Paid-In Capital**	**Distributed Value**	**Equity In Fund**	**Total Value**	**Distributed / Paid In**	**Total Value / Paid In**	**Total Value IRR**
New Leaf Ventures II, L.P. (2008)	$450.0	$407.3	$204.2	$386.9	$591.1	0.50x	1.45x	16.7%
New Leaf Ventures I, L.P. (2005)	$310.0	$302.6	$154.7	$374.8	$529.5	0.51x	1.75x	12.0%
Sprout Capital IX, L.P. (2000) (Healthcare Technology)	$690.0	$690.0	$1,071.5	$71.1	$1,142.7	1.55x	1.66x	9.3%
Sprout Capital VIII, L.P. (1998) (Healthcare Technology)	$147.1	$147.1	$218.7	$0.0	$218.7	1.49x	1.49x	6.0%
Sprout Capital VII, L.P. (1995) (Healthcare Technology)	$95.2	$95.2	$207.0	$0.0	$207.0	2.17x	2.17x	12.0%
Sprout Growth II, L.P. (1995) (Healthcare Technology)	$15.3	$15.3	$56.3	$0.0	$56.3	3.69x	3.69x	28.9%

XIV. CERTAIN OFFERING NOTICES

NOTICE TO RESIDENTS OF FLORIDA

The Interests being offered have not been registered with the Florida Division of Securities. If sales are made to five or more Florida purchasers, each sale is voidable by the purchaser within three days after the first tender of consideration is made by such purchaser to the issuer, an agent of the issuer or within three days after availability of that privilege is communicated to such purchaser, whichever occurs later.

NOTICE TO NON-U.S. RESIDENTS GENERALLY

No action has been or will be taken in any jurisdiction outside the U.S. that would permit an offering of these securities, or possession or distribution of offering material in connection with the issue of these securities, in any country or jurisdiction where action for that purpose is required. It is the responsibility of any person wishing to subscribe for the Interests to inform themselves of and to observe all applicable laws and regulations of any relevant jurisdictions. Prospective investors should inform themselves as to the legal requirements within the countries of their citizenship, residence, domicile and place of business with respect to the acquisition, holding or disposal of the Interests, and any foreign exchange restrictions that may be relevant thereto.

AUSTRALIA

The Fund is not a registered managed investment scheme, nor is it required to be registered as a managed investment scheme, and this Memorandum is not a product disclosure document lodged or required to be lodged with the Australian Securities and Investments Commission. Interests in the Fund will only be offered in Australia to persons to whom such securities may be offered without a product disclosure statement under Part 7.9 of the Corporations Act 2001 (Cth). Interests in the Fund subscribed for by investors in Australia must not be offered for resale in Australia for 12 months from allotment except in circumstances where disclosure to investors under the Corporations Act 2001 (Cth) would not be required or where a compliant product disclosure statement is produced. Prospective investors in Australia should confer with their professional advisors if in any doubt about their position.

AUSTRIA

Interests in the Fund may only be offered in the Republic of Austria in compliance with the provisions of the Austrian Capital Market Act, the Austrian Investment Funds Act and other laws applicable in the Republic of Austria governing the offer, issue and sale of the interests in the Republic of Austria. Interests in the Fund are being offered exclusively to a limited number of investors in Austria and are therefore not subject to the public offering requirements of the Austrian Capital Market Act or the Austrian Investment Fund Act. Interests in the Fund are not registered or otherwise authorized for public offer either under the Austrian Capital Market Act, the Austrian Investment Fund Act or any other securities regulation in Austria. The recipients of this Memorandum and other selling material in respect to interests in the Fund have been individually selected and are targeted exclusively on the basis of a private placement. This offer may not be made to any other persons than the recipients to whom this Memorandum is personally addressed. Any investor intending to offer and resell interests in the Fund in Austria is solely responsible that any offer and resale takes place in compliance with the applicable provisions of the Austrian Capital Market Act, the Austrian Investment Fund Act or any other applicable securities regulation.

BELGIUM

The Fund has not been and will not be registered with the Belgian Financial Services and Markets Authority (Autoriteit voor financiële diensten en markten / Autorité des Services Financiers et des Marchés) ("FSMA") as a foreign collective investment institution referred to under Article 127 of the Belgian Act of July 20, 2004 relating to certain forms of collective management of investment portfolios. This Memorandum and the offering of Limited Partner Interests in the Fund have not been and will not be notified to, and have not been approved or disapproved by, the FSMA. The public offering of Limited Partner Interests in the Fund in Belgium within the meaning of the Belgian Act of July 20, 2004, and the Belgian Act of June 16, 2006 on the public offering of investment instruments and the admission of investment instruments to listing on a regulated market has not been authorized by the Fund. The offering may therefore not be advertised, and Limited Partner Interests in the Fund may not be offered, sold, transferred or delivered to, or subscribed to by, and no memorandum, information circular, brochure or similar document may be distributed to, directly or indirectly, any individual or legal entity in Belgium, except (i) to "qualified investors" as referred to in Article 10, § 1 of the aforementioned Act of June 16, 2006, (ii) subject to the restriction of a minimum investment of €100,000 per investor or (iii) in any other circumstances in which the present offering does not qualify as a public offering in accordance with the aforementioned Act of June 16, 2006. This Memorandum has been issued to the intended recipient for personal use only and exclusively for the purpose of the offering. Therefore, it may not be used for any other purpose, nor passed on to any other person in Belgium.

  - National Drug Intelligence Center (NDIC)
  - Organized Crime Drug Enforcement Task Force (OCDETF)
  - Immigration and Customs Enforcement (ICE)
  - Customs and Border Protection (CBP)
  - Federal Reserve
  - United States Postal Inspection Service (USPIS)

  The MLTA contains detailed analyses of money laundering vulnerabilities across banking, insurance, casinos and MSBs including, but not limited to, the following:

  - Banking (e.g., correspondent banking, cash letters/pouch activities, private banking, online banking, remote deposit capture [RDC])
  - MSBs (e.g., provision of check cashing, money transmission, prepaid access, monetary instrument, currency exchange services to "noncustomers") and informal value transfer systems (IVTS)
  - Emerging electronic and remote payment systems
  - Bulk cash smuggling
  - Trade-based money laundering (e.g., Black Market Peso Exchange [BMPE], foreign trade zones [FTZs])
  - Legal entities (e.g., trusts, shell companies, corporations, limited liability companies)

- **National Money Laundering Strategy (NMLS) –** Written by the U.S. Departments of Homeland Security, Justice, Treasury, and State, as well as by the Federal Reserve, the OCC, and the FDIC, the NMLS was published in 2007 in direct response to the MLTA. Nine key goals were outlined:
  - Continuing to safeguard the banking system
  - Enhancing financial transparency in money services businesses (MSBs)
  - Stemming the flow of illicit bulk cash out of the United States
  - Attacking trade-based money laundering at home and abroad
  - Promoting transparency in the ownership of legal entities
  - Examining anti-money laundering regulatory oversight and enforcement at casinos
  - Implementing and enforcing anti-money laundering regulations for the insurance industry
  - Supporting global anti-money laundering capacity building and enforcement efforts
  - Improving how to measure progress
- **International Narcotics Control Strategy Report (INCSR) –** An annual report issued by the U.S. Department of State that describes the efforts to attack, country by country, all aspects of the international drug trade, as well as chemical control, money laundering and financial crimes.
- **Country Reports on Terrorism –** An annual report, previously known as Patterns of Global Terrorism, issued by the Department of State that provides overviews of terrorist activity in countries in which acts of terrorism occurred, countries that are state sponsors of terrorism, and countries determined by the U.S. Secretary of State to be of particular interest in the global war on terror. The Country Reports on Terrorism also cover major terrorism-related events involving Americans, information on terrorist groups, terrorist sanctuaries, terrorist attempts to acquire weapons of mass destruction, statistical information provided by the National Counterterrorism Center (NCTC) on individuals killed, injured or kidnapped by terrorist groups, and bilateral and multilateral counterterrorism cooperation.

For additional guidance issued by key international groups, please refer to the Key International Groups and Initiatives section. For details on guidance specific to a particular topic (e.g., Suspicious Activity Reports [SARs], correspondent banking, politically exposed persons [PEPs], trade finance), please refer to the respective sections throughout this publication.

- **Administrative Rulings –** Rulings that provide a new interpretation of the BSA or any other statute granting FinCEN authority, express an opinion about a new regulatory issue, and/or outline the effect of the various releases on covered financial institutions.
- **Advisories/Bulletins/Rulings/Fact Sheets –** An archive of advisories, advisory withdrawals, bulletins, rulings and fact sheets dating back to 1996.
- **Answers to Frequently Asked Bank Secrecy Act (BSA) Questions –** A list of basic questions and answers about BSA and USA PATRIOT Act laws and regulations.
- **Reports and Publications –** Reports published periodically on key regulatory issues and strategies to address these issues including, but not limited to, the following:
    - **The SAR Activity Review: "Trends, Tips & Issues" –** A publication produced approximately once or twice each year by FinCEN in cooperation with many regulatory, law enforcement and industry partners. The publication gives the public information and insight concerning the preparation, use and value of SARs filed by institutions.
    - **The SAR Activity Review: "By the Numbers" –** A publication that is generally produced twice each year as a companion to The SAR Activity Review: "Trends, Tips & Issues" and provides numerical data on SAR filings.
    - **Financial Institutions Outreach Initiative –** Reports sharing information gathered through various outreach initiatives with representatives in the financial industry (e.g., large depository institutions, MSBs).
    - **Strategic Analytical Reports and Other Publications –** Publications addressing other trends and issues, such as Mortgage Loan Fraud: An Update of Trends Based upon an Analysis of Suspicious Activity Reports (April 2008).
    - **Annual Report –** Provides an overview of FinCEN's current state and details the strategies and outcomes of the year's operations.
    - **Report to Congress –** An archive of reports made to Congress by the U.S. Secretary of the Treasury dating back to 2002, including the required annual 361(b) report.
    - **The Strategic Plan –** Published periodically, the Strategic Plan details how FinCEN intends to achieve its current goals in the near future.
- **Bank Secrecy Act/Anti-Money Laundering Examination Manual for Money Services Businesses –** Guidance on the examination process of MSBs, in English and Spanish.
- **Enforcement Actions –** Links to enforcement actions dating back to 1999.
- **Law Enforcement –** A summary of support services for law enforcement and links to law enforcement case examples that have been assisted by information reported under BSA regulations.
- **News Releases –** An archive of important FinCEN news releases dating back to 1994.
- **Speeches –** An archive of speeches given by the director of FinCEN dating back to 2004.
- **Testimony –** An archive of testimony given by the director of FinCEN dating back to 2004.

26. How does FinCEN interact with banking and securities regulators?

In 2004, FinCEN entered into a Memorandum of Understanding (MOU) with federal banking regulators. The MOU sets forth procedures for the administration of the BSA, Titles I and II of Pub. L. 91-508, as amended, codified at 12 U.S.C. § 1829b, 12 U.S.C. §§ 1951-1959, and 31 U.S.C. §§ 5311-5332; information relating to the primary federal regulators' policies and procedures for examination of BSA compliance; significant BSA compliance issues at banking organizations supervised by the regulators; and analytical data based on or derived from information provided by the regulators. The MOU also gives FinCEN authority to issue its own enforcement actions, even when regulators may not think it is necessary. On April 26, 2005, FinCEN and the New York State Banking Department entered into a similar MOU; shortly thereafter, a number of other states followed suit.

In late 2006, the SEC and FinCEN entered into an MOU under which the SEC provides FinCEN with detailed information on a quarterly basis regarding the AML examination and enforcement activities of the SEC and the Self-Regulatory Organizations (SROs). In return, FinCEN provides assistance and analytical reports to the SEC.

Eye on the Market | March 15, 2012 J.P.Morgan

Topics: Is US data as good as it looks? Is Chinese data as bad as it looks? Is European data as bizarre as it looks?

The importance of the US consumer

Billions of USD	Private Consumption	Investment	Gov. Spending	Net exports
US	**10,417**	**1,818**	**3,020**	**(500)**
Asia	**8,231**	**4,614**	**3,449**	**424**
Asia ex. CN/JPN	**2,761**	**597**	**1,482**	**134**
Japan	**3,501**	**1,185**	**1,175**	**58**
China	**1,969**	**2,832**	**792**	**232**
Europe	**9,670**	**3,148**	**3,662**	**130**
EMU	**7,145**	**2,386**	**2,704**	**145**
Latin America	**2,747**	**754**	**1,010**	**28**

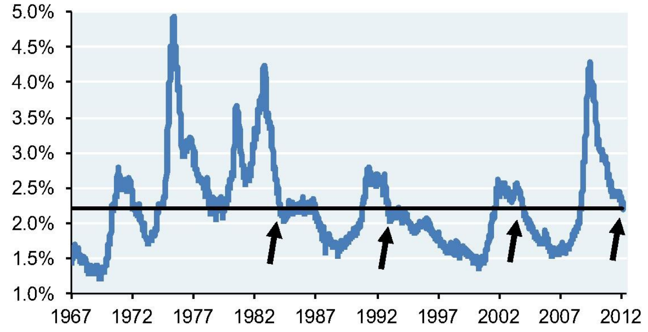
Source: Haver. Data as of Q4 2010.

What a diff'rence a day makes. Ever since the ECB gift-wrapped 650 billion Euros for EU banks, the news has been pretty good, particularly in the US. Most of the market's focus is on the US consumer, for the simple reason that US households are the largest single economic force in the world (see table). Even after deconstructing the labor report for signs of false positives[1], the message is clear: US job markets are gradually getting better, and so is spending. The capital position of US banks is in good shape[2], so we expect access to credit to remain easy[3]. A US GDP growth rate of 2.25% is still below trend, but a long way from the unavoidable recession articulated by the ECRI last fall. I agree with those who think the US economy could not withstand a withdrawal of stimulus right now, but I also do not see the Fed actively withdrawing it. Whatever rain dance the Fed is doing to keep inflation low, they better keep doing it.

A chart I saw on the history of jobless claims (below, left) was meant to show how good things may get. In the prior 3 business cycles, when continuing claims fell through 2.2% of the labor force (1982, 1993, 2003), it was a great time to add risk in portfolios. Improving claims signaled that the business cycle was picking up enough steam to be self-sustaining, and last week, the US crossed through this barrier again. But as Big Bird used to say, ***one of these things is not like the other:* the US primary budget deficit which supports this recovery is a bigger now**. So, the US economy *better* improve markedly in order to pay the freight. When will this chart on the primary deficit (below, right) matter to financial markets? Only when it becomes a binding constraint, either due to a lack of demand to finance the deficit at current yields, or due to the economic cost of closing it. The timing is uncertain, given Central Bank purchases of Treasury bonds, and a Congress which may leave the problem for another day (or generation). I lose a lot of sleep over this, but I don't know a lot of other people that do. As discussed last week, portfolio allocations given today's private and public sector realities vary substantially across wealth management firms. Ours rely on hedge funds, credit and real estate as complements to public and private equity.

In past cycles, claims were a great market signal

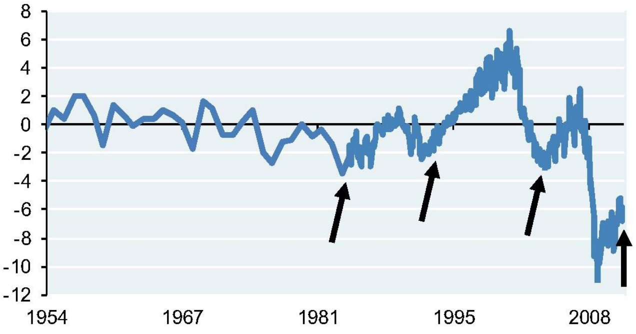
Continuing claims as a % of labor force



Source: Department of Labor, BLS, Empirical Research Partners.

Paging Dick Cheney: Do Deficits Matter?

Deficit ex-interest, percent of GDP, seasonally adjusted



Source: CBO, BEA, OMB, J.P. Morgan Private Bank.

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[1] Our chief economist Michael Vaknin has analyzed the various seasonal adjustments that the Bureau of Labor Statistics uses when it reports payrolls. After adjusting for better weather, the Lehman shock and other factors, payroll growth does not look quite as good as reported, but is still positive. The trend is supported by the latest Manpower surveys, Institute for Supply Management surveys, JOLTS surveys, etc, all of which show growing demand for labor. Even state and local government firing has finally come to an end, which was a constant fixture of the last two years. So far, hourly earnings remain very weak, and typically do not grow until later in the cycle.

[2] **The latest US bank stress tests were pretty stressful**. Two-year loss assumptions applied by the Fed were higher than those experienced during 2008 and 2009, and comparable in almost every category to realized losses during the Great Depression. Almost every institution passed the test, and even the ones that didn't are expected to reach required capital levels in short order. US banks have sharply reduced reliance on "hot money" (time deposits, commercial paper and repo), relying instead on core retail deposits to finance their balance sheets. Comparing the rigor of US and European bank stress tests is like comparing the rigors of actual football to Wii football.

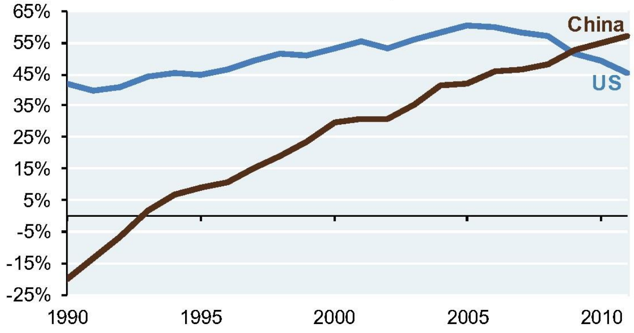
[3] So far, net household borrowing other than student loans is weak; loan growth is almost exclusively from companies rather than households.

The most important energy developments of 2012: how countries are planning for Independence Day

IV: What geopolitical consequences may result from China's rising energy needs?

As shown below, US reliance on oil imports as a share of consumption is gradually declining. China's percentage, on the other hand, is rising and now higher than in the US (in dollar terms, US imports are higher but they should converge in a few years). China now has the world's largest new car market and most extensive network of superhighways. It is making substantial investments in a renewable energy, and is now the largest solar, wind, nuclear and hydropower market. However, given the current lack of a viable, affordable electric car, Chinese fossil fuel consumption is expected to continue to rise. The penetration rate of passenger vehicles in China is considerably lower than in other countries. China's per capita GDP is lower as well, so the gap will not close overnight. The second chart below gives a good indication of the potential rise in automobile use in China over time. These trends are part of the reason why we do not expect reduced US imports to result in lower oil prices.

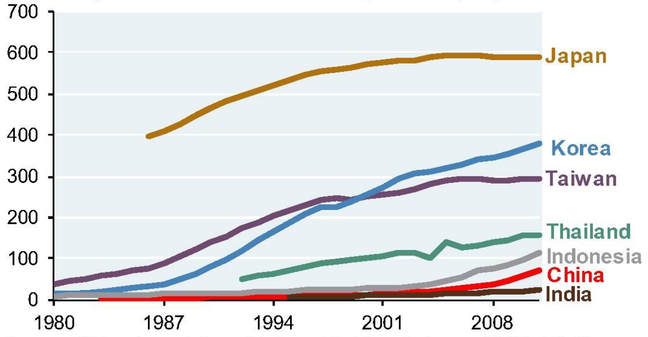
Net imports of crude and petroleum products as a percent of total domestic consumption



Source: Energy Information Administration, BP.

Auto penetration rates

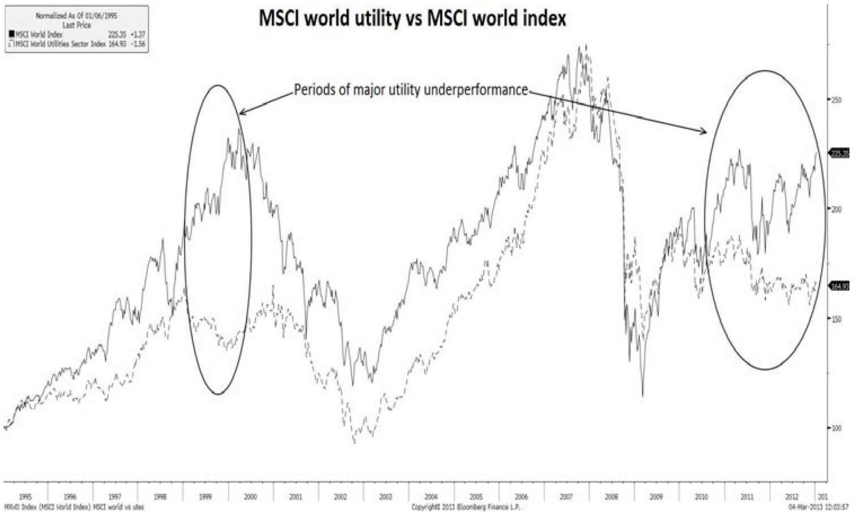
Passenger and commercial vehicles per 1,000 people



Source: China Association of Automobile Manufacturers, CEIC, J.P. Morgan Securities LLC.

Vaclav sees these trends as important, since they affect prospects of China co-operating with the West on containment of Iran's nuclear ambitions. Unfortunately for the West, the prospects for co-operation on sanctions appear dim. Some things to keep in mind about China's relationship with Iran, described in greater detail in a 2012 Rand Institute report:

- Iran and China share a deep ambivalence about the West given their prior experiences as semi-colonial states in the beginning of the 20th century. The US supported a coup against a popular Iranian leader in 1953 (and also influenced other political transitions), and Communist China was under U.S.-led international sanctions for most of its existence.
- China extended recognition to Iran's Islamic Republic only 3 days after its founding, and improved relations with Iran through arms sales during the Iran-Iraq war (small arms, ballistic and anti-cruise ship missiles)
- China became a net oil importer in 1993, and further strengthened ties with Iran. Once China was accepted into the World Trade Organization in 2001, the West lost the little leverage it had over Sino-Iranian ties.
- From 1985 to 1996, China provided Iran with civil nuclear technology and machinery, assistance in uranium exploration and mining, training for nuclear engineers, and instruction on the use of lasers for uranium enrichment. China ended its direct support for these nuclear programs in 1997. Chinese design and technology are seen in Iranian ballistic and anti-cruise ship missiles, anti-ship mines and fast attack boats.
- For the last two decades, China has built railroads, bridges, dams, ports and tunnels throughout Iran. In 2007, China became Iran's largest trading partner, and the two countries announced plans to broaden bilateral trade to $100 bn per year by 2016.
- The two countries formed a joint oil and gas committee to broaden energy cooperation. China is the most important investor in Iranian exploration and extraction operations, and has been selected to develop the Azadegan and Yadavaran oil and natural gas fields, and the South Pars field. Iran is the largest methanol exporter to China, displacing Saudi Arabia.
- Iran used to be vulnerable to refined fuel sanctions when it imported 40% of them; China helped Iran build out its refining capacity, and Iran is now a refined fuels exporter.
- China is paying Iran in rice and medical/engineering supplies (and cash) in exchange for Iranian oil, and a Chinese shipyard delivered the first of 12 supertankers to Iran, giving it extra capacity to transport its oil to Asia.
- A couple of quotes on the geopolitics of all of this, from the Peking University School of International Studies and Renmin University: "*It is beneficial for our external environment to have the United States militarily and diplomatically deeply sunk in the Mideast to the extent that it can hardly extricate itself*", and "*Washington's deeper involvement in the Middle East is favorable to Beijing, reducing Washington's ability to place focused attention and pressure on China.*" [Rand report]



Source: Bloomberg

Of course, not all investors sold utilities – some were astute buyers. Warren Buffett (at the time, thought to be a bit out of touch with the new economy) acquired $12 billion worth of utility assets between 1999 and 2002, namely MidAmerican ($9 billion), Kern River Gas Transmission ($960 million) and Northern Natural Gas ($1.9 billion).

Following the dotcom bust (Mar 00-Sep 01), global utilities staged a sharp catch-up rally over a 1.5-year period, generating +33% outperformance (-5% absolute). During this period, US utilities (which previously were the worst-performing region for utilities during the run-up) outperformed +68% (+37% absolute). But the **averages conceal some outsized moves in utility stocks** as investors returned to the sector en masse. Early investors realized enormous absolute returns on low-beta US utility stocks (e.g. SO +114%, ETR +114%, FE +99%, AEP +91%, PEG +78%) while the S&P sank -31%. Still, investors were discriminating as several stocks (e.g., CVA -45%, AES -34%, EIX -19%, PCG -16%, NU -3%) suffered absolute declines.

In Europe, the UK water utility stocks (among the lowest-beta/volatility stocks in the global sector) were wholly ignored during the dotcom rally despite their improving fundamentals. Following the dotcom bust (Mar 00-Sep 01) they also staged a fierce outperformance rally, and early fundamental investors realized very attractive absolute returns (e.g. Pennon +80%, Severn Trent +52% and United Utilities +21%), and enormous outperformance of the broader market (FTSE 100 Index -33%). This is all the more impressive when you consider that these water utility stocks have betas of approximately .43, less than half that of the broad market.

Again, fundamental investors were discerning as several European utilities experienced absolute declined during this same period (e.g., EDP -31%, Enel -30%, Endesa -20%, Centrica -19%).

- Japan Rallies

Japan offers insights into potential utility outperformance during periods of private sector deleveraging similar to what developed markets have experienced since the financial crisis.

Richard Koo, Chief Economist of the Nomura Research Institute, cites two major policy errors that extended Japan's long balance sheet recession: increased taxes in 1997 and expenditure cuts in 2001. Both policy errors were preceded by a long or sharp period of utility underperformance relative to

For exclusive of Jeffrey Epstein

Day 8: Governance

The tensions between free vs. proprietary software help focus us on foundational questions of governance that are threaded through the course. To what extent should new technologies be shaped and shared by anyone without gatekeeping? 2017 may find the Internet in middle age. Do its puzzles suggest anything about whether and how to resolve governance questions for more newly mainstreamed technologies like machine learning and other AI?

In addition to the challenges that the Internet has provided in regulation and governance, the inability to really understand what many "learned" algorithms do, and their ability to have properties and abilities beyond the capabilities of their initial designers, presents additional challenges when thinking about whether and how to regulate the research, as well as the deployment, of AI. Phenomena like digital currencies and distributed AI systems reprises the ideas and challenges of Barlow's declaration of independence of cyberspace.

Readings:

Governance: IoT Security

- J.M. Porup, "'Internet of Things' security is hilariously broken and getting worse" *Ars Technica* (January 23, 2016) http://arstechnica.com/security/2016/01/how-to-search-the-internet-of-things-for-photos-of-sleeping-babies/ archived at https://perma.cc/R8LZ-MULJ.
- Nicole Perlroth, "Hackers Used New Weapons to Disrupt Major Websites Across U.S." *The New York Times* (October 21, 2016) http://www.nytimes.com/2016/10/22/business/internet-problems-attack.html.

Governance: Algorithmic Accountability

- Jonathan Zittrain, "Facebook Could Decide an Election Without Anyone Ever Finding Out," *New Republic* (June 1, 2014) https://newrepublic.com/article/117878/information-fiduciary-solution-facebook-digital-gerrymandering archived at https://perma.cc/ED8B-C7YL.
- Carole Cadwalladr, "Google, democracy and the truth about internet search," *The Guardian* (December 4, 2016) https://www.theguardian.com/technology/2016/dec/04/google-democracy-truth-internet-search-facebook archived at https://perma.cc/JC7F-XDUM.
- Cathy O'Neil, *Weapons Of Math Destruction : How Big Data Increases Inequality And Threatens Democracy* [e-book]. New York: Crown; 2016. Available from: eBook Collection (EBSCOhost), Ipswich, MA. Accessed December 10, 2016
    - Read the Introduction and Chapter 1 (will print for the students)
- Jack Balkin and Jonathan Zittrain, "A Grand Bargain to Make Tech Companies Trustworthy," *The Atlantic* (October 3, 2016) http://www.theatlantic.com/technology/archive/2016/10/information-fiduciary/502346/ archived at https://perma.cc/QXX4-VASM.

SUCCESSFUL TRACK RECORD OF HOME RUNS

PRIVATE		
RelateIQ	2014	**25.0x**
ValueClick	2004	**8.1x**
sina	2008	**6.9x**
RUPTURE	2008	**5.0x**
ADDEPAR	2014	**TBD**

(7 IPOs and 13 Acquisitions)

PUBLIC		
tencent.com	2014	**77.0x**
illumina	2009	**39.0x**
US AUTOPARTS	2010	**4.6x**
ISILON SYSTEMS	2011	**5.1x**
NCSOFT	2007	**3.4x**

(17 Public Acquisitions)

Private and Public Exits through Multiple Market Cycles

People in many countries enjoy bashing the French. Are their reasons the same, or do they vary country to country? What do you think is the source of French-bashing in your country?

Diane Allen, Self-Employed Pharmacy Owner 27 Years and Counting
Written May 3

I find this an interesting question. My sister-in-law was born and raised in France. She has lived in the US 35+ years. Last time she went home to visit her family, she cam...

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If a car pulls across your driveway and blocks your car in and you need to leave is there any way to move the car without breaking the law?

Erik Pistek, former Detective NYPD Retired
Written Jul 1

Yes. Ask a neighbor if they have a floor jack with wheels. Jack the car up from the center of axle Just enough to get tires off ground. Then push the car from the side fend...

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Why does Warren Buffett live like a poor person?

John Gill

From: Richard Kahn [redacted]
Sent: 7/8/2018 7:24:05 PM
To: Jeffrey Epstein [jeevacation@gmail.com]
Subject: Bookstore owner calls police after customer confronted Steve Bannon | TheHill

Importance: High

http://thehill.com/blogs/blog-briefing-room/news/395982-bookstore-owner-called-the-police-after-a-women-called-steve

Bookstore owner calls police after customer confronted Steve Bannon

By Morgan GstalterJuly 07, 2018 - 10:38 PM EDT

A Richmond, Va., bookstore owner said he called the police on Saturday after former White House chief strategist Stephen Bannon was confronted in his store.

Nick Cooke, owner of Black Swan Books, told the Richmond Times-Dispatch that a woman called Bannon a “piece of trash.”

The woman then left the store after Cooke said he called 911.

“Steve Bannon was simply standing, looking at books, minding his own business. I asked her to leave, and she wouldn’t. And I said, ‘I’m going to call the police if you don’t,’ and I went to call the police and she left,” Cooke said. “And that’s the end of the story.”

Bannon grew up in Richmond, the newspaper noted.

The Richmond Police Department confirmed the call was made but the call was canceled before officers responded.

“We are a bookshop. Bookshops are all about ideas and tolerating different opinions and not about verbally assaulting somebody, which is what was happening,” Cooke said.

Sponsored Content

Trump's Supreme Court shortlist

By The Hill

Read More

NOTICE OF 2019 ANNUAL MEETING OF STOCKHOLDERS

The 2019 Annual Meeting of Stockholders of CARVANA CO. (“Carvana”) will be held at 3419 East University Drive, Phoenix, AZ 85034, on Tuesday, April 23, 2019, at 8:00 AM (PDT) for the following purposes:

1. to elect two nominees identified in the accompanying proxy statement to serve as directors, as recommended by the Compensation and Nominating Committee of the Board of Directors of Carvana;
2. to ratify the appointment of Grant Thornton LLP as Carvana’s independent registered public accounting firm for the year ending December 31, 2019;
3. to consider the approval, by an advisory vote, of Carvana’s executive compensation (i.e., “say-on-pay” proposal);
4. to recommend, by an advisory vote, the frequency of future advisory votes on executive compensation (i.e., “say-on-pay frequency”); and
5. to transact other business as may properly come before the meeting or any adjournment of the meeting.

Our board of directors has set February 25, 2019, as our record date for this year’s meeting. Only stockholders that owned Carvana Co.’s Class A common stock or Class B common stock at the close of business on that day are entitled to notice of our annual meeting and may vote at it or any adjournment of the meeting. A list of stockholders entitled to vote at the meeting will be available for examination by any stockholder for any purpose relevant to the meeting during ordinary business hours for at least ten days prior to April 23, 2019, at 1930 W. Rio Salado Pkwy, Tempe, AZ 85281.

By Order of the Board of Directors

Paul Breaux

General Counsel and Secretary

COMPENSATION SETTING PROCESS

ROLE OF COMPENSATION AND NOMINATING COMMITTEE AND CHIEF EXECUTIVE OFFICER IN SETTING EXECUTIVE COMPENSATION

The Compensation and Nominating Committee has responsibility for overseeing the design, development, and implementation of the compensation program for our chief executive officer and other NEOs. The committee evaluates the performance of our chief executive officer and the performance of the other executive officers. Our chief executive officer assists the committee in evaluating the performance of our other executive officers, including the named executive officers other than the chief executive officer. Our chief executive officer does not participate in portions of committee meetings or meetings of the Board when his compensation is discussed and determined, and has requested that his total compensation be set significantly below the market median due to his significant ownership interest in our company

Based on these assessments, the members of the Compensation and Nominating Committee, each of whom is an independent director, make the final compensation decisions for the NEOs other than the CEO, and make recommendations to the Board for the CEO's compensation. The Board makes the final decision for the CEO's compensation.

INDEPENDENT COMPENSATION ADVISOR

Our Compensation and Nominating Committee believes that independent advice is important in developing Carvana's executive compensation programs. Since September 2017, the committee has engaged Korn Ferry as its independent compensation consultant to advise on executive compensation matters. All work performed by the independent compensation consultant regarding our executive compensation program is tasked and overseen directly by the committee. Our management provides information and analyses to the committee at the committee's direction.

In addition to advising on our executive compensation program, Korn Ferry, at the request of and in service to the committee, provided certain other compensation advisory services for 2018 compensation, including assistance with establishing a compensation peer group, benchmarking aggregate broad-based equity usage (including run-rate and total dilution), benchmarking director compensation, benchmarking non-executive employee compensation in certain job families within our company, and developing the narrative disclosure in this Compensation Discussion and Analysis. Our Compensation and Nominating Committee paid Korn Ferry $103,000 for their 2018 services.

Korn Ferry does not provide any other material services to Carvana Co. The committee has assessed the independence of Korn Ferry pursuant to the NYSE rules and concluded that Korn Ferry's work for the committee did not raise any conflicts of interest.

BASE SALARY

The base salaries for the named executive officers are reviewed annually by the Compensation and Nominating Committee. Individual salaries are determined based upon a combination of factors, including the scope of responsibilities, individual performance and experience, our company's performance, an individual's potential for making contributions to future company performance, and competitive pay practices. The committee considers all these factors in determining base salary increases and does not assign a specific weighting to any individual factor.

In February 2018, the Compensation and Nominating Committee reviewed the base salaries of our executive officers, including our named executive officers, taking into consideration the factors described above. Following this review, the committee determined to maintain the base salary of our CEO at its 2017 level and to increase the base salaries of the other four named executive officers to maintain the competitiveness of this compensation element. All of the NEOs' 2018 base salaries were approximately at or below the market median as determined by the compensation consultant.

Ernest Garcia III, our chief executive officer, had a base salary of $400,000 for both 2017 and 2018, with no increase. Mark Jenkins, our chief financial officer, had a 2017 base salary of $350,000 and a 2018 base salary of $375,000, an increase of 7.1%. Benjamin Huston, our chief operating officer, had a 2017 base salary of $350,000 and a 2018 base salary of $375,000, an increase of 7.1%. Ryan Keeton, our chief brand officer, had a 2017 base salary of $315,000 and a 2018 base salary of $330,000, an increase of 4.8%. Daniel Gill, our chief product officer, had a 2017 base salary of $315,000 and a 2018 base salary of $330,000, an increase of 4.8%.

2018 ANNUAL INCENTIVE PLAN

Our annual incentive plan was designed to align our executive officers' incentives with our company goals and, therefore, to be aligned with the interests of our shareholders. The Compensation and Nominating Committee approves which executives are eligible to participate (other than the CEO) and the level of potential awards, identifies appropriate performance measures, and determines the financial targets of each measure. The CEO makes recommendations as to these matters, but the Compensation and Nominating Committee makes all decisions with respect to the implementation of the annual incentive plan. For the CEO's annual incentive plan, the Compensation and Nominating Committee makes a recommendation, with the Board making the final decision. In establishing performance goals, the committee and the Board as a whole review industry and market conditions, alignment of the goals with our strategy, projected general economic conditions, and both our past and forecasted performance levels.

Target Bonuses and Payout Ranges

For the 2018 annual incentive plan, the committee established a target bonus at 66.7% of base salary for each of the NEOs, with a payout range of 0%–133% of base salary. Utilizing the same bonus target for all the NEOs promotes a culture of teamwork among the senior executives and encourages their entrepreneurial spirit. As a result, the CEO's target 2018 total cash, including both base salary and target annual incentive plan amount, is below the market 25th percentile of our compensation peer group.

CEO PAY RATIO

The 2018 annual total compensation of our median-compensated employee other than Mr. Garcia was $36,204. We identified our median-compensated employee by calculating the annual salary of all our employees as of December 31, 2018, annualized for those who joined Carvana during the year and who were not seasonal or temporary employees. Mr. Garcia's 2018 annual total compensation was $2,075,726, as disclosed in the "Summary Compensation Table" above. The ratio of our median-compensated employee to Mr. Garcia is 1-to-57.

CERTAIN RELATIONSHIPS AND RELATED PARTY TRANSACTIONS

POLICIES FOR APPROVAL OF RELATED PARTY TRANSACTIONS

We have adopted a written policy with respect to the review, approval, and ratification of related party transactions. Under the policy, our Audit Committee is responsible for reviewing and approving related party transactions. In the course of its review and approval of related party transactions, our Audit Committee will consider the relevant facts and circumstances to decide whether to approve such transactions. In particular, our policy requires our Audit Committee to consider, among other factors it deems appropriate:

- the related person's relationship to us and interest in the transaction,
- the material facts of the proposed transaction, including the proposed aggregate value of the transaction,
- the impact on a director's independence in the event the related person is a director or an immediate family member of the director,
- the benefits to us of the proposed transaction,
- if applicable, the availability of other sources of comparable products or services, and
- an assessment of whether the proposed transaction is on terms that are comparable to the terms available to an unrelated third party or to employees generally.

The Audit Committee may only approve those transactions that are in or are not inconsistent with our best interests and those of our stockholders, as the Audit Committee determines in good faith.

AMENDED AND R ESTATED OPERATING AGREEMENT

In connection with the organizational transactions we effected in connection with our IPO, we amended and restated Carvana Group's existing operating agreement, which we refer to as the "LLC Operating Agreement." In addition, on March 2, 2018, Carvana Group signed an amendment of its LLC Agreement to, among other things, create a class of convertible preferred units. The convertible preferred units were created in connection with the December 5, 2017, issuance and sale of 100,000 shares of convertible preferred stock of Carvana Co. The amendment was effective December 5, 2017. As of December 31, 2018, the 100,000 shares of convertible preferred stock had all been converted into shares of Class A common stock and are no longer outstanding.

Ratification of the appointment of Grant Thornton LLP requires affirmative votes from the holders of a majority of the shares present in person or represented by proxy at the annual meeting and entitled to vote. If Carvana's stockholders do not ratify the appointment of Grant Thornton LLP, the Audit Committee will reconsider the appointment and may affirm the appointment or retain another independent accounting firm. Even if the appointment is ratified, the Audit Committee may in the future replace Grant Thornton LLP as our independent registered public accounting firm if it is determined that it is in Carvana's best interests to do so.

The Audit Committee and the Board of Directors recommend that you vote "FOR" the ratification of the appointment of Grant Thornton LLP as the independent registered public accounting firm of Carvana for the year ending December 31, 2019.

@WolfyJam · *2 hours ago*

Notice how celebrities basking in their narcissism think they can dictate culture to us while they live their lives in the comfort of their ivory castles. Mia farrow has no clue what the right to bear arms means and because of that she needs to shut the hell up. _As far as blacks go-- I grew up in the 70's coming home from Hallahan H.S. in Philadelphia, me and my small group of girls were swarmed by a mob of black girls who would kick and slap and pull hair without provocation. of course we would fight back but then that was back in the day when whites weren't sissies. Still I made excuses for them. Black men would get in my face for no other reason than to intimidate me. rocks were thrown a my car for no reason. So, in short, based on my experiences Blacks are the cause of racism and if they hate whites so much then they should stay away completely and totally. _

Report

Reply

+1

@WolfyJam · *2 hours ago*

I read the Control factor and it was excellent. I wish more people would realize that our country is at its most vulnerable than ever in its history. the jihadis have basically taken over the inner cities. Islam's love for violence coupled with ignorance and narcissim are a recipe for disaster. I hope Americans wake up in time to save their future. I'm not optimistic though. I think its over but still I fight on.

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1 reply · *active 30 minutes ago*

0

dmw · *30 minutes ago*

And I would think one "phy sical constraint" is to not let them in in the first place. By & quot;them" I mean those who have allegiance to a socio-political system disguised as a religion that seeks world dominance by man imposed methodology/effort -- unlike Judaism and Christianity properly understood. If we are to "believe", the world already has a King and does not need a Caliph.

Report

Reply

0

MikeWood · *6 hours ago*

Ground-breaking, brilliant. There are absolutely essentially lessons to be learned from this. Buy this book, read it, study it, and lend it to your friends and colleagues. Do it.

Report

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lambsev77 54p · *4 hours ago*

The fall of Rome... The fall of the 3rd Reich... The fall of Western Civilization...

oooooh... Scary!

How about the fall of humankind recorded in Genesis Chapter 3 and following?

We're ALL GONNA DIE! But will you rise with Christ?

Report

Reply

+1

@WolfyJam · *2 hours ago*

Notice how celebrities basking in their narcissism think they can dictate culture to us while they live their lives in the comfort of their ivory castles. Mia farrow has no clue what the right to bear arms means and because of that she needs to shut the hell up. _As far as blacks go-- I grew up in the 70's coming home from Hallahan H.S. in Philadel phia, me and my small group of girls were swarmed by a mob of black girls who would kick and slap and pull hair without provocation. of course we would fight back but then that was back in the day when whites weren't sissies. Still I made excuses for them. Black men would get in my face for no other reason than to intimidate me. rocks were thrown a my car for no reason. So, in short, based on my experiences Blacks are the cause of racism and if they hate whites so much then they should stay away completely and totally. _

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Private Placement Memorandum
Dated September 27, 2006

CONFIDENTIAL **$1,000,000,000**

KNOWLEDGE UNIVERSE EDUCATION L.P.

KUE Management Inc.

Investment Units consisting of Common Limited Partner Units of Knowledge Universe Education LP and Class A Ordinary Shares of KUE Management Inc.

Knowledge Universe Education L.P. ("KUE," and, together with its subsidiaries, the "Company") is a Cayman Islands exempted limited partnership. KUE Management Inc. is a Cayman Islands exempted company and the sole general partner of KUE (the "General Partner"). KUE is the indirect controlling stockholder of Knowledge Learning Corporation ("KLC"), the largest for-profit early childhood care and education company in the U.S., which operates approximately 2,500 locations in 39 states.

We are offering investment units (the "Units"), each comprised of one Common limited partner unit ("Common LP Unit") in KUE and one Class A ordinary share of the General Partner ("Class A Share"), for $1,000 per Unit. We are offering the Units on a strictly confidential basis pursuant to a private placement with Goldman, Sachs & Co. and Credit Suisse acting as placement agents (the "Agents"), subject to various conditions, exclusively to accredited investors. We intend to use the net proceeds from the sale of the Units to expand operations, including through strategic acquisitions in the U.S. and internationally, to develop new products and services, to repay certain existing indebtedness and for other corporate purposes. We reserve the right to withdraw, cancel or modify the offer and to reject orders in whole or in part. The offering is expected to be completed in one or more closings on or prior to March 31, 2007.

The Units and the underlying Common LP Units and Class A Shares have not been, nor will they be, registered under the U.S. Securities Act of 1933, as amended (the "Securities Act"), or qualified under any applicable U.S. state statutes or laws of any non-U.S. jurisdiction. The Units will be offered and sold under the exemption from registration provided by Section 4(2) of the Securities Act and Regulation D and Regulation S promulgated under the Securities Act, and other similar exemptions available pursuant to the laws of the states and other jurisdictions where the offering will be made.

There is no public market for the Units and no such market is expected to develop in the future. There is no obligation on the part of any person to register the Units or the underlying Common LP Units or Class A Shares under the Securities Act or any state or non-U.S. securities laws other than in the limited circumstances described in this Private Placement Memorandum.

Investing in the Units involves risks. You should read the section entitled "Risk Factors" beginning on page 44 for a discussion of certain risk factors that you should consider before investing in the Units.

Placement Agents

Goldman, Sachs & Co. **Credit Suisse**

Private Placement Memorandum dated September 27, 2006.

You should rely only on the information contained in this Private Placement Memorandum (this "Memorandum") or to which we have referred you. We have not authorized anyone to provide you with information that is different. This Memorandum may only be used where it is legal to sell the Units. The information in this Memorandum may only be accurate on the date of this Memorandum. No person has any obligation to update the statements and information contained in this Memorandum.

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THIS CONFIDENTIAL MEMORANDUM IS BEING FURNISHED ON A STRICTLY CONFIDENTIAL BASIS SOLELY TO A LIMITED NUMBER OF SOPHISTICATED PROSPECTIVE INVESTORS FOR THE PURPOSE OF PROVIDING CERTAIN INFORMATION REGARDING THE OFFERING OF THE UNITS. A PROSPECTIVE INVESTOR MAY NOT DISTRIBUTE OR REPRODUCE THIS MEMORANDUM, OR DISCLOSE ITS CONTENTS, TO ANY PERSON OTHER THAN PROFESSIONAL REPRESENTATIVES OF THE INVESTOR IN CONNECTION WITH ITS CONSIDERATION OF THIS INVESTMENT. AS CONTEMPLATED BY THE CONFIDENTIALITY AGREEMENTS BETWEEN THE INVESTORS AND KUE, THIS MEMORANDUM AND ANY INFORMATION FURNISHED IN CONNECTION HEREWITH (COLLECTIVELY, THE "COMPANY INFORMATION"), YOU ACKNOWLEDGE AND AGREE THAT (I) ALL COMPANY INFORMATION IS CONFIDENTIAL; (II) YOU WILL NOT DISTRIBUTE OR REPRODUCE THE COMPANY INFORMATION IN WHOLE OR IN PART AND WILL USE THE COMPANY INFORMATION SOLELY TO EVALUATE AN INVESTMENT IN THE UNITS AND NOT FOR ANY OTHER PURPOSE; (III) IN THE EVENT THAT YOU HAVE NO FURTHER INTEREST IN PARTICIPATING IN THIS OFFERING, OR IF AT ANY TIME THE COMPANY SO REQUESTS (AT ITS DISCRETION), YOU WILL PROMPTLY RETURN, DESTROY OR DELETE ALL COMPANY INFORMATION THAT YOU HAVE RECEIVED AT THE EARLIEST OPPORTUNITY AS REQUESTED BY THE COMPANY; AND (IV) YOU WILL NOT DISCLOSE TO ANY THIRD PARTY THE COMPANY INFORMATION THAT HAS BEEN PROVIDED TO YOU. EACH PROSPECTIVE INVESTOR IS RESPONSIBLE FOR THE FEES OF ITS OWN COUNSEL, ACCOUNTANTS AND OTHER ADVISORS.

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IN MAKING AN INVESTMENT DECISION, INVESTORS MUST RELY ON THEIR OWN EXAMINATION OF THE COMPANY, THE GENERAL PARTNER AND THE TERMS OF THE OFFERING, INCLUDING THE MERITS AND RISKS INVOLVED. YOU ACKNOWLEDGE THAT (A) YOU HAVE NOT RELIED ON THE AGENTS OR ANY PERSON AFFILIATED WITH THE AGENTS IN CONNECTION WITH YOUR INVESTIGATION OF THE ACCURACY OF THE INFORMATION PROVIDED HEREIN OR YOUR INVESTMENT DECISION AND (B) NO PERSON HAS BEEN AUTHORIZED TO GIVE ANY INFORMATION OR TO MAKE ANY REPRESENTATION CONCERNING THE COMPANY, THE GENERAL PARTNER OR THE OFFERING OTHER THAN AS CONTAINED IN THIS MEMORANDUM AND INFORMATION GIVEN BY DULY AUTHORIZED OFFICERS AND EMPLOYEES OF THE COMPANY IN CONNECTION WITH

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Representations of Canadian Purchasers. EACH PURCHASER OF THE UNITS RESIDENT IN A CANADIAN JURISDICTION WILL BE DEEMED TO HAVE REPRESENTED TO KUE AND THE GENERAL PARTNER AND THE AGENTS WHO SELLS THE UNITS TO SUCH PURCHASER THAT: (A) THE OFFER AND SALE OF THE UNITS WAS MADE EXCLUSIVELY THROUGH THIS MEMORANDUM AND WAS NOT MADE THROUGH AN ADVERTISEMENT OF THE UNITS IN ANY PRINTED MEDIA OF GENERAL AND REGULAR PAID CIRCULATION, RADIO, TELEVISION OR TELECOMMUNICATIONS, INCLUDING ELECTRONIC DISPLAY, OR ANY OTHER FORM OF ADVERTISING IN CANADA; (B) SUCH PURCHASER HAS REVIEWED AND ACKNOWLEDGES THE TERMS REFERRED TO ABOVE UNDER "RESALE RESTRICTIONS IN CANADA"; (C) WHERE REQUIRED BY LAW, SUCH PURCHASER IS PURCHASING AS PRINCIPAL FOR ITS OWN ACCOUNT AND NOT AS AGENT; AND (D) SUCH PURCHASER OR ANY ULTIMATE PURCHASER FOR WHICH SUCH PURCHASER IS ACTING AS AGENT IS ENTITLED UNDER APPLICABLE CANADIAN SECURITIES LAWS TO PURCHASE SUCH UNITS WITHOUT THE BENEFIT OF A PROSPECTUS QUALIFIED UNDER SUCH SECURITIES LAWS, AND WITHOUT LIMITING THE GENERALITY OF THE FOREGOING: (I) SUCH PURCHASER IS AN "ACCREDITED INVESTOR" AS DEFINED IN SECTION 1.1 OF NATIONAL INSTRUMENT 45-106 ("NI 45-106"), OR FULFILLS THE REQUIREMENTS OF SECTION 2.10 OF NI 45-106 (A "$150K PURCHASER") AND (II) IN THE CASE OF A PURCHASER RESIDENT IN ONTARIO, SUCH PURCHASER, OR ANY ULTIMATE PURCHASER FOR WHICH SUCH PURCHASER IS ACTING AS AGENT, IS AN "ACCREDITED INVESTOR" AS DEFINED IN NI 45-106, OR A $150K PURCHASER WHO IS PURCHASING THE UNITS FROM A REGISTERED INVESTMENT DEALER WITHIN THE MEANING OF SECTION 98 OF THE REGULATION TO THE SECURITIES ACT (ONTARIO).

IN ADDITION, EACH PURCHASER OF THE UNITS RESIDENT IN CANADA WILL BE DEEMED TO HAVE REPRESENTED TO KUE, THE GENERAL PARTNER AND THE AGENTS FROM WHOM A PURCHASE CONFIRMATION WAS RECEIVED, THAT SUCH PURCHASER: (A) HAS BEEN NOTIFIED BY KUE AND THE GENERAL PARTNER (I) THAT KUE AND THE GENERAL PARTNER ARE REQUIRED TO PROVIDE INFORMATION ("PERSONAL INFORMATION") PERTAINING TO THE PURCHASER AS REQUIRED TO BE DISCLOSED IN SCHEDULE I OF FORM 45-106F1 UNDER NI 45-106 (INCLUDING ITS NAME, ADDRESS, TELEPHONE NUMBER AND THE NUMBER AND VALUE OF ANY UNITS PURCHASED), WHICH FORM 45-106F1 IS REQUIRED TO BE FILED BY KUE AND THE GENERAL PARTNER UNDER NI 45-106; (II) THAT SUCH PERSONAL INFORMATION WILL BE DELIVERED TO THE ONTARIO SECURITIES COMMISSION (THE "OSC") IN ACCORDANCE WITH NI 45-106; (III) THAT SUCH PERSONAL INFORMATION IS BEING COLLECTED INDIRECTLY BY THE OSC UNDER THE AUTHORITY GRANTED TO IT UNDER THE SECURITIES LEGISLATION OF ONTARIO; (IV) THAT SUCH PERSONAL INFORMATION IS BEING COLLECTED FOR THE PURPOSES OF THE ADMINISTRATION AND ENFORCEMENT OF THE SECURITIES LEGISLATION OF ONTARIO; AND (V) THAT THE PUBLIC OFFICIAL IN ONTARIO WHO CAN ANSWER QUESTIONS capability that is expected to increase in line with the 13.5% Adjusted EBITDA CAGR projected until 2011.

*k*12 continues to grow at an impressive rate, with annual enrollment growth projected in excess of 25% over the next two years

- Many of *k*12's direct costs are semi-fixed in nature (*e.g.*, school administration) creating strong economies of scale as this business continues to grow.
- With $70 million invested in the development of the platform for kindergarten to 9th grade classes, extension of the offering into new states and schools is expected to be achieved at relatively low costs.

- **Leading market position in early childhood education with significant brand equity**

Leading market positions in early childhood education and before and after school programs

- Largest U.S. provider of ECE services (1,934 centers).

KLC OpCo's U.S. Market Position

Organization	Capacity	LTM Revenue[1]	Centers	Owner
KLC OpCo	253,000	$1,477.7[2]	1,934	KUE
La Petite Academy	89,000	411.1	649	JP Morgan
Bright Horizons	66,350	625.3	616	Public
ABC Learning[3]	69,000	220.7	460	Public

[1] LTM revenue in millions. KLC OpCo and Bright Horizons LTM as of 12/31/05, La Petite LTM as of 2/28/06, ABC (Learning Care Group) LTM as of 10/14/05.

[2] Pro forma for the effects of the acquisition of KinderCare in January 2005 and for the separation of KLC into KLC OpCo and KLC PropCo in November 2005, as if those transactions and related financing had occurred on January 1, 2004.

[3] Represents ABC's presence within the U.S. pro forma for the acquisition of the Learning Care Group. ABC has approximately 1,167 total centers (707 of which are located in Australia and New Zealand) and combined LTM revenue of $441.1 million using Learning Care Group LTM revenue of $220.7 million as of 10/14/05 and ABC LTM revenue of $292.7 million AUD as of 6/30/05, converted at an average exchange rate of .753 AUD/USD from 6/30/04 to 6/30/05.

- Second largest U.S. provider of ECE to employers (122 centers).
- Largest U.S. for-profit provider of before and after school programs (573 sites).

High brand awareness and customer recognition

- The programs are marketed primarily under the KinderCare, Children's Discovery Centers, Knowledge Beginnings, and Children's World brand names. KinderCare enjoyed 87% aided awareness as of November 2005.[11]

- **Superior competitive position of KLC OpCo as a result of proprietary curriculum, standards of excellence and experience and scale**

---

[11] Source: Parthenon Conjoint Survey.

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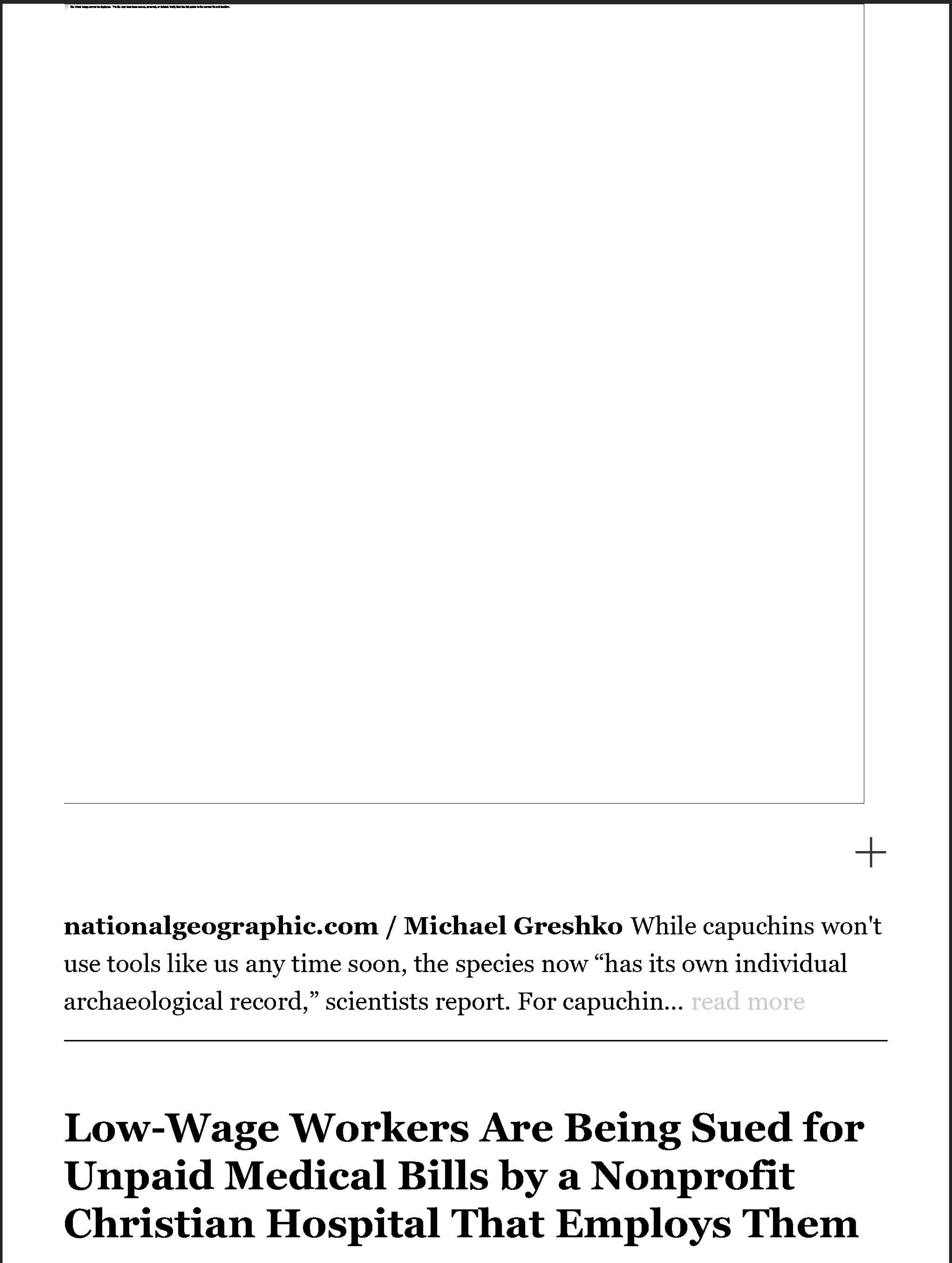

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FCPA

A Resource Guide to the U.S. Foreign Corrupt Practices Act

By the Criminal Division of the U.S. Department of Justice and
the Enforcement Division of the U.S. Securities and Exchange Commission

This guide is intended to provide information for businesses and individuals regarding the U.S. Foreign Corrupt Practices Act (FCPA). The guide has been prepared by the staff of the Criminal Division of the U.S. Department of Justice and the Enforcement Division of the U.S. Securities and Exchange Commission. It is non-binding, informal, and summary in nature, and the information contained herein does not constitute rules or regulations. As such, it is not intended to, does not, and may not be relied upon to create any rights, substantive or procedural, that are enforceable at law by any party, in any criminal, civil, or administrative matter. It is not intended to substitute for the advice of legal counsel on specific issues related to the FCPA. It does not in any way limit the enforcement intentions or litigating positions of the U.S. Department of Justice, the U.S. Securities and Exchange Commission, or any other U.S. government agency.

Companies or individuals seeking an opinion concerning specific prospective conduct are encouraged to use the U.S. Department of Justice's opinion procedure discussed in Chapter 9 of this guide.

This guide is United States Government property. It is available to the public free of charge online at www.justice.gov/criminal/fraud/fcpa and www.sec.gov/spotlight/fcpa.shtml.

A RESOURCE GUIDE TO THE
U.S. FOREIGN CORRUPT PRACTICES ACT

By the Criminal Division of the U.S. Department of Justice and
the Enforcement Division of the U.S. Securities and Exchange Commission

FOREWORD

We are pleased to announce the publication of *A Resource Guide to the U.S. Foreign Corrupt Practices Act*. The Foreign Corrupt Practices Act (FCPA) is a critically important statute for combating corruption around the globe. Corruption has corrosive effects on democratic institutions, undermining public accountability and diverting public resources from important priorities such as health, education, and infrastructure. When business is won or lost based on how much a company is willing to pay in bribes rather than on the quality of its products and services, law-abiding companies are placed at a competitive disadvantage—and consumers lose. For these and other reasons, enforcing the FCPA is a continuing priority at the Department of Justice (DOJ) and the Securities and Exchange Commission (SEC).

The *Guide* is the product of extensive efforts by experts at DOJ and SEC, and has benefited from valuable input from the Departments of Commerce and State. It endeavors to provide helpful information to enterprises of all shapes and sizes—from small businesses doing their first transactions abroad to multi-national corporations with subsidiaries around the world. The *Guide* addresses a wide variety of topics, including who and what is covered by the FCPA's anti-bribery and accounting provisions; the definition of a "foreign official"; what constitute proper and improper gifts, travel and entertainment expenses; the nature of facilitating payments; how successor liability applies in the mergers and acquisitions context; the hallmarks of an effective corporate compliance program; and the different types of civil and criminal resolutions available in the FCPA context. On these and other topics, the *Guide* takes a multi-faceted approach, setting forth in detail the statutory requirements while also providing insight into DOJ and SEC enforcement practices through hypotheticals, examples of enforcement actions and anonymized declinations, and summaries of applicable case law and DOJ opinion releases.

The *Guide* is an unprecedented undertaking by DOJ and SEC to provide the public with detailed information about our FCPA enforcement approach and priorities. We are proud of the many lawyers and staff who worked on this project, and hope that it will be a useful reference for companies, individuals, and others interested in our enforcement of the Act.

Robert Khuzami

Lanny A. Breuer
Assistant Attorney General
Criminal Division
Department of Justice

Robert S. Khuzami
Director of Enforcement
Securities and Exchange Commission

November 14, 2012

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> Corporate bribery is bad business. In our free market system it is basic that the sale of products should take place on the basis of price, quality, and service. Corporate bribery is fundamentally destructive of this basic tenet. Corporate bribery of foreign officials takes place primarily to assist corporations in gaining business. Thus foreign corporate bribery affects the very stability of overseas business. Foreign corporate bribes also affect our domestic competitive climate when domestic firms engage in such practices as a substitute for healthy competition for foreign business.[1]
>
> —United States Senate, 1977

INTRODUCTION

Congress enacted the U.S. Foreign Corrupt Practices Act (FCPA or the Act) in 1977 in response to revelations of widespread bribery of foreign officials by U.S. companies. The Act was intended to halt those corrupt practices, create a level playing field for honest businesses, and restore public confidence in the integrity of the marketplace.[2]

The FCPA contains both anti-bribery and accounting provisions. The anti-bribery provisions prohibit U.S. persons and businesses (domestic concerns), U.S. and foreign public companies listed on stock exchanges in the United States or which are required to file periodic reports with the Securities and Exchange Commission (issuers), and certain foreign persons and businesses acting while in the territory of the United States (territorial jurisdiction) from making corrupt payments to foreign officials to obtain or retain business. The accounting provisions require issuers to make and keep accurate books and records and to devise and maintain an adequate system of internal accounting controls. The accounting provisions also prohibit individuals and businesses from knowingly falsifying books and records or knowingly circumventing or failing to implement a system of internal controls.

The Department of Justice (DOJ) and the Securities and Exchange Commission (SEC) share FCPA enforcement authority and are committed to fighting foreign bribery through robust enforcement. An important component of this effort is education, and this resource guide, prepared by DOJ and SEC staff, aims to provide businesses and individuals with information to help them abide by the law, detect and prevent FCPA violations, and implement effective compliance programs.

The Costs of Corruption

Corruption is a global problem. In the three decades since Congress enacted the FCPA, the extent of corporate bribery has become clearer and its ramifications in a transnational economy starker. Corruption impedes economic growth by diverting public resources from important priorities such as health, education, and infrastructure. It undermines democratic values and public accountability and weakens the rule of law.[3] And it threatens stability and security by facilitating criminal activity within and across borders, such as the illegal trafficking of people, weapons, and drugs.[4] International corruption also undercuts good governance and impedes U.S. efforts to promote freedom and democracy, end poverty, and combat crime and terrorism across the globe.[5]

Corruption is also bad for business. Corruption is anti-competitive, leading to distorted prices and disadvantaging honest businesses that do not pay bribes. It increases the cost of doing business globally and inflates the cost of government contracts in developing countries.[6] Corruption also introduces significant uncertainty into business transactions: Contracts secured through bribery may be legally unenforceable, and paying bribes on one contract often results in corrupt officials making ever-increasing demands.[7] Bribery has destructive effects within a business as well, undermining employee confidence in a company's management and fostering a permissive atmosphere for other kinds of corporate misconduct, such as employee self-dealing, embezzlement,[8] financial fraud,[9] and anti-competitive behavior.[10] Bribery thus raises the risks of doing business, putting a company's bottom line and reputation in jeopardy. Companies that pay bribes to win business ultimately undermine their own long-term interests and the best interests of their investors.

Historical Background

Congress enacted the FCPA in 1977 after revelations of widespread global corruption in the wake of the Watergate political scandal. SEC discovered that more than 400 U.S. companies had paid hundreds of millions of dollars in bribes to foreign government officials to secure business overseas.[11] SEC reported that companies were using secret "slush funds" to make illegal campaign contributions in the United States and corrupt payments to foreign officials abroad and were falsifying their corporate financial records to conceal the payments.[12]

> No problem does more to alienate citizens from their political leaders and institutions, and to undermine political stability and economic development, than endemic corruption among the government, political party leaders, judges, and bureaucrats.
>
> — *USAID Anti-Corruption Strategy*

Congress viewed passage of the FCPA as critical to stopping corporate bribery, which had tarnished the image of U.S. businesses, impaired public confidence in the financial integrity of U.S. companies, and hampered the efficient functioning of the markets.[13] As Congress recognized when it passed the FCPA, corruption imposes enormous costs both at home and abroad, leading to market inefficiencies and instability, sub-standard products, and an unfair playing field for honest businesses.[14] By enacting a strong foreign bribery statute, Congress sought to minimize these destructive effects and help companies resist corrupt demands, while addressing the destructive foreign policy ramifications of transnational bribery.[15] The Act also prohibited off-the-books accounting through provisions designed to "strengthen the accuracy of the corporate books and records and the reliability of the audit process which constitute the foundations of our system of corporate disclosure."[16]

In 1988, Congress amended the FCPA to add two affirmative defenses: (1) the local law defense; and (2) the reasonable and bona fide promotional expense defense.[17] Congress also requested that the President negotiate an international treaty with members of the Organisation for Economic Co-operation and Development (OECD) to prohibit bribery in international business transactions by many of the United States' major trading partners.[18] Subsequent negotiations at the OECD culminated in the Convention on Combating Bribery of Foreign Officials in International Business Transactions (Anti-Bribery Convention), which, among other things, required parties to make it a crime to bribe foreign officials.[19]

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In 1998, the FCPA was amended to conform to the requirements of the Anti-Bribery Convention. These amendments expanded the FCPA's scope to: (1) include payments made to secure "any improper advantage"; (2) reach certain foreign persons who commit an act in furtherance of a foreign bribe while in the United States; (3) cover public international organizations in the definition of "foreign official"; (4) add an alternative basis for jurisdiction based on nationality; and (5) apply criminal penalties to foreign nationals employed by or acting as agents of U.S. companies.[20] The Anti-Bribery Convention came into force on February 15, 1999, with the United States as a founding party.

National Landscape: Interagency Efforts

DOJ and SEC share enforcement authority for the FCPA's anti-bribery and accounting provisions.[21] They also work with many other federal agencies and law enforcement partners to investigate and prosecute FCPA violations, reduce bribery demands through good governance programs and other measures, and promote a fair playing field for U.S. companies doing business abroad.

Department of Justice

DOJ has criminal FCPA enforcement authority over "issuers" (i.e., public companies) and their officers, directors, employees, agents, or stockholders acting on the issuer's behalf. DOJ also has both criminal and civil enforcement responsibility for the FCPA's anti-bribery provisions over "domestic concerns"—which include (a) U.S. citizens, nationals, and residents and (b) U.S. businesses and their officers, directors, employees, agents, or stockholders acting on the domestic concern's behalf—and certain foreign persons and businesses that act in furtherance of an FCPA violation while in the territory of the United States. Within DOJ, the Fraud Section of the Criminal Division has primary responsibility for all FCPA matters.[22] FCPA matters are handled primarily by the FCPA Unit within the Fraud Section, regularly working jointly with U.S. Attorneys' Offices around the country.

DOJ maintains a website dedicated to the FCPA and its enforcement at http://www.justice.gov/criminal/fraud/fcpa/. The website provides translations of the FCPA in numerous languages, relevant legislative history, and selected documents from FCPA-related prosecutions and resolutions since 1977, including charging documents, plea agreements, deferred prosecution agreements, non-prosecution agreements, press releases, and other relevant pleadings and court decisions. The website also provides copies of opinions issued in response to requests by companies and individuals under DOJ's FCPA opinion procedure. The procedures for submitting a request for an opinion can be found at http://www.justice.gov/criminal/fraud/fcpa/docs/frgncrpt.pdf and are discussed further in Chapter 9. Individuals and companies wishing to disclose information about potential FCPA violations are encouraged to contact the FCPA Unit at the telephone number or email address above.

Securities and Exchange Commission

SEC is responsible for civil enforcement of the FCPA over issuers and their officers, directors, employees, agents,

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100 F Street, N.E.
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Online: Tips, Complaints, and
Referrals website
http://www.sec.gov/complaint/tipscomplaint.shtml

Office of Investor Education and Advocacy:
(800) SEC-0330

or stockholders acting on the issuer's behalf. SEC's Division of Enforcement has responsibility for investigating and prosecuting FCPA violations. In 2010, SEC's Enforcement Division created a specialized FCPA Unit, with attorneys in Washington, D.C. and in regional offices around the country, to focus specifically on FCPA enforcement. The Unit investigates potential FCPA violations; facilitates coordination with DOJ's FCPA program and with other federal and international law enforcement partners; uses its expert knowledge of the law to promote consistent enforcement of the FCPA; analyzes tips, complaints, and referrals regarding allegations of foreign bribery; and conducts public outreach to raise awareness of anti-corruption efforts and good corporate governance programs.

The FCPA Unit maintains a "Spotlight on FCPA" section on SEC's website at http://www.sec.gov/spotlight/fcpa.shtml. The website, which is updated regularly, provides general information about the Act, links to all SEC enforcement actions involving the FCPA, including both federal court actions and administrative proceedings, and contains other useful information.

Individuals and companies with information about possible FCPA violations by issuers may report them to the Enforcement Division via SEC's online Tips, Complaints and Referral system, http://www.sec.gov/complaint/tipscomplaint.shtml. They may also submit information to SEC's Office of the Whistleblower through the same online system or by contacting the Office of the Whistleblower at (202) 551-4790. Additionally, investors with questions about the FCPA can call the Office of Investor Education and Advocacy at (800) SEC-0330.

For more information about SEC's Whistleblower Program, under which certain eligible whistleblowers may be entitled to a monetary award if their information leads to certain SEC actions, see Chapter 8.

Law Enforcement Partners

DOJ's FCPA Unit regularly works with the Federal Bureau of Investigation (FBI) to investigate potential FCPA violations. The FBI's International Corruption Unit has primary responsibility for international corruption and fraud investigations and coordinates the FBI's national FCPA enforcement program. The FBI also has a dedicated FCPA squad of FBI special agents (located in the Washington Field Office) that is responsible for investigating many, and providing support for all, of the FBI's FCPA investigations. In addition, the Department of Homeland Security and the Internal Revenue Service-Criminal Investigation regularly investigate potential FCPA violations. A number of other agencies are also involved in the fight against international corruption, including the Department of Treasury's Office of Foreign Assets Control, which has helped lead a number of FCPA investigations.

Departments of Commerce and State

Besides enforcement efforts by DOJ and SEC, the U.S. government is also working to address corruption abroad and level the playing field for U.S. businesses through the efforts of the Departments of Commerce and State. Both Commerce and State advance anti-corruption and good governance initiatives globally and regularly assist U.S. companies doing business overseas in several important ways. Both agencies encourage U.S. businesses to seek the assistance of U.S embassies when they are confronted with bribe solicitations or other corruption-related issues overseas.[23]

The Department of Commerce offers a number of important resources for businesses, including the International Trade Administration's United States and Foreign Commercial Service (Commercial Service). The Commercial Service has export and industry specialists located in over 100 U.S. cities and 70 countries who are available to provide counseling and other assistance to U.S. businesses, particularly small and medium-sized companies, regarding exporting their products and services. Among other things, these specialists can help a U.S. company conduct due diligence when choosing business partners or agents overseas. The International Company Profile Program, for instance, can be part of a U.S. business' evaluation of potential overseas business partners.[24] Businesses may contact the Commercial Service through its website, http://export.gov/eac/, or directly at its domestic and foreign offices.[25]

Additionally, the Department of Commerce's Office of the General Counsel maintains a website, http://www.commerce.gov/os/ogc/transparency-and-anti-bribery-initiatives, that contains recent articles and speeches, links to translations of the FCPA, a catalogue of anti-corruption resources, and a list of international conventions and initiatives. The Trade Compliance Center in the Department of Commerce's International Trade Administration hosts a website with anti-bribery resources, http://tcc.export.gov/Bribery. This website contains an online form through which U.S. companies can report allegations of foreign bribery by foreign competitors in international business transactions.[26] The Department of Commerce also provides information to companies through a number of U.S. and international publications designed to assist firms in complying with anti-corruption laws. For example, the Department of Commerce has included a new anti-corruption section in its Country Commercial Guides, prepared by market experts at U.S. embassies worldwide, that contains information on market conditions for more than 100 countries, including information on the FCPA for exporters.[27] The Department of Commerce has also published a guide, *Business Ethics: A Manual for Managing a Responsible Business Enterprise in Emerging Market Economies*, which contains information about corporate compliance programs for businesses involved in international trade.[28]

The Departments of Commerce and State also provide advocacy support, when determined to be in the national interest, for U.S. companies bidding for foreign government contracts. The Department of Commerce's Advocacy Center, for example, supports U.S. businesses competing against foreign companies for international contracts, such as by arranging for the delivery of an advocacy message by U.S. government officials or assisting with unanticipated problems such as suspected bribery by a competitor.[29] The Department of State's Bureau of Economic and Business Affairs (specifically, its Office of Commercial and Business Affairs) similarly assists U.S. firms doing business overseas by providing advocacy on behalf of U.S. businesses and identifying risk areas for U.S. businesses; more information is available on its website, http://www.state.gov/e/eb/cba/. Also, the Department of State's economic officers serving overseas provide commercial advocacy and support for U.S. companies at the many overseas diplomatic posts where the Commercial Service is not represented.

The Department of State promotes U.S. government interests in addressing corruption internationally through country-to-country diplomatic engagement; development of and follow-through on international commitments relating to corruption; promotion of high-level political engagement (e.g., the G20 Anticorruption Action Plan); public outreach in foreign countries; and support for building the capacity of foreign partners to combat corruption. In fiscal year 2009, the U.S. government provided more than $1 billion for anti-corruption and related good governance assistance abroad.

The Department of State's Bureau of International Narcotics and Law Enforcement Affairs (INL) manages U.S. participation in many multilateral anti-corruption political and legal initiatives at the global and regional level. INL also funds and coordinates significant efforts to assist countries with combating corruption through legal reform, training, and other capacity-building efforts. Inquiries about the U.S. government's general anti-corruption efforts and implementation of global and regional anti-corruption initiatives may be directed to INL on its website, http://www.state.gov/j/inl/c/crime/corr/index.htm, or by email to: anticorruption@state.gov. In addition, the U.S. Agency for International Development (USAID) has developed several anti-corruption programs and publications, information about which can be found at http://www.usaid.gov/what-we-do/democracy-human-rights-and-governance/promoting-accountability-transparency. Finally, the Department of State's brochure "Fighting Global Corruption: Business Risk Management," available at http://www.ogc.doc.gov/pdfs/Fighting_Global_Corruption.pdf, provides guidance about corporate compliance programs as well as international anti-corruption initiatives.

International Landscape: Global Anti-Corruption Efforts

In recent years, there has been a growing international consensus that corruption must be combated, and the United States and other countries are parties to a number of international anti-corruption conventions. Under these conventions, countries that are parties undertake commitments to adopt a range of preventive and criminal law measures to combat corruption. The conventions incorporate review processes that allow the United States to monitor other countries to ensure that they are meeting their international obligations. Likewise, these processes in turn permit other parties to monitor the United States' anti-corruption laws and enforcement to ensure that such enforcement and legal frameworks are consistent with the United States' treaty obligations.[30] U.S. officials regularly address the subject of corruption with our foreign counterparts to raise awareness of the importance of fighting corruption and urge stronger enforcement of anti-corruption laws and policies.

OECD Working Group on Bribery and the Anti-Bribery Convention

The OECD was founded in 1961 to stimulate economic progress and world trade. As noted, the Anti-Bribery Convention requires its parties to criminalize the bribery of foreign public officials in international business transactions.[31] As of November 1, 2012, there were 39 parties to the Anti-Bribery Convention: 34 OECD member countries (including the United States) and five non-OECD member countries (Argentina, Brazil, Bulgaria, the Russian Federation, and South Africa). All of these parties are also members of the OECD Working Group on Bribery (Working Group).[32]

The Working Group is responsible for monitoring the implementation of the Anti-Bribery Convention, the 2009 Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions, and related instruments. Its members meet quarterly to review and monitor implementation of the Anti-Bribery Convention by member states around the world. Each party undergoes periodic peer review.[33] This peer-review monitoring system is conducted in three phases. The Phase 1 review includes an in-depth assessment of each country's domestic laws implementing the Convention. The Phase 2 review examines the effectiveness of each country's laws and anti-bribery efforts. The final phase is a permanent cycle of peer review (the first cycle of which is referred to as the Phase 3 review) that evaluates a country's enforcement actions and results, as well as the country's efforts to address weaknesses identified during the Phase 2 review.[34] All of the monitoring reports for the parties to the Convention can be found on the OECD website and can be a useful resource about the foreign bribery laws of the OECD Working Group member countries.[35]

The United States was one of the first countries to undergo all three phases of review. The reports and appendices can be found on DOJ's and SEC's websites.[36] In its

Phase 3 review of the United States, which was completed in October 2010, the Working Group commended U.S. efforts to fight transnational bribery and highlighted a number of best practices developed by the United States. The report also noted areas where the United States' anti-bribery efforts could be improved, including consolidating publicly available information on the application of the FCPA and enhancing awareness among small- and medium-sized companies about the prevention and detection of foreign bribery. This guide is, in part, a response to these Phase 3 recommendations and is intended to help businesses and individuals better understand the FCPA.[37]

U.N. Convention Against Corruption

The United States is a state party to the United Nations Convention Against Corruption (UNCAC), which was adopted by the U.N. General Assembly on October 31, 2003, and entered into force on December 14, 2005.[38] The United States ratified the UNCAC on October 30, 2006. The UNCAC requires parties to criminalize a wide range of corrupt acts, including domestic and foreign bribery and related offenses such as money laundering and obstruction of justice. The UNCAC also establishes guidelines for the creation of anti-corruption bodies, codes of conduct for public officials, transparent and objective systems of procurement, and enhanced accounting and auditing standards for the private sector. A peer review mechanism assesses the implementation of the UNCAC by parties to the Convention, with a focus in the first round on criminalization and law enforcement as well as international legal cooperation.[39] The United States has been reviewed under the Pilot Review Programme, the report of which is available on DOJ's website. As of November 1, 2012, 163 countries were parties to the UNCAC.[40]

Other Anti-Corruption Conventions

The Inter-American Convention Against Corruption (IACAC) was the first international anti-corruption convention, adopted in March 1996 in Caracas, Venezuela, by members of the Organization of American States.[41] The IACAC requires parties (of which the United States is one) to criminalize both foreign and domestic bribery. A body known as the Mechanism for Follow-Up on the Implementation of the Inter-American Convention Against Corruption (MESICIC) monitors parties' compliance with the IACAC. As of November 1, 2012, 31 countries were parties to MESICIC.

The Council of Europe established the Group of States Against Corruption (GRECO) in 1999 to monitor countries' compliance with the Council of Europe's anti-corruption standards, including the Council of Europe's Criminal Law Convention on Corruption.[42] These standards include prohibitions on the solicitation and receipt of bribes, as well as foreign bribery. As of November 1, 2012, GRECO member states, which need not be members of the Council of Europe, include more than 45 European countries and the United States.[43]

The United States has been reviewed under both MESICIC and GRECO, and the reports generated by those reviews are available on DOJ's website.

THE FCPA: ANTI-BRIBERY PROVISIONS

The FCPA addresses the problem of international corruption in two ways: (1) the anti-bribery provisions, which are discussed below, prohibit individuals and businesses from bribing foreign government officials in order to obtain or retain business and (2) the accounting provisions, which are discussed in Chapter 3, impose certain record keeping and internal control requirements on issuers, and prohibit individuals and companies from knowingly falsifying an issuer's books and records or circumventing or failing to implement an issuer's system of internal controls. Violations of the FCPA can lead to civil and criminal penalties, sanctions, and remedies, including fines, disgorgement, and/or imprisonment.

In general, the FCPA prohibits offering to pay, paying, promising to pay, or authorizing the payment of money or anything of value to a foreign official in order to influence any act or decision of the foreign official in his or her official capacity or to secure any other improper advantage in order to obtain or retain business.[44]

Who Is Covered by the Anti-Bribery Provisions?

The FCPA's anti-bribery provisions apply broadly to three categories of persons and entities: (1) "issuers" and their officers, directors, employees, agents, and shareholders; (2) "domestic concerns" and their officers, directors, employees, agents, and shareholders; and (3) certain persons and entities, other than issuers and domestic concerns, acting while in the territory of the United States.

Issuers—15 U.S.C. § 78dd-1

Section 30A of the Securities Exchange Act of 1934 (the Exchange Act), which can be found at 15 U.S.C. § 78dd-1, contains the anti-bribery provision governing

How Can I Tell If My Company Is an "Issuer"?

- It is listed on a national securities exchange in the United States (either stock or American Depository Receipts); or
- The company's stock trades in the over-the-counter market in the United States and the company is required to file SEC reports.
- To see if your company files SEC reports, go to SEC's website at http://www.sec.gov/edgar/searchedgar/webusers.htm.

issuers.[45] A company is an "issuer" under the FCPA if it has a class of securities registered under Section 12 of the Exchange Act[46] or is required to file periodic and other reports with SEC under Section 15(d) of the Exchange Act.[47] In practice, this means that any company with a class of securities listed on a national securities exchange in the United States, or any company with a class of securities quoted in the over-the-counter market in the United States and required to file periodic reports with SEC, is an issuer. A company thus need not be a U.S. company to be an issuer. Foreign companies with American Depository Receipts that are listed on a U.S. exchange are also issuers.[48] As of December 31, 2011, 965 foreign companies were registered with SEC.[49] Officers, directors, employees, agents, or stockholders acting on behalf of an issuer (whether U.S. or foreign nationals), and any co-conspirators, also can be prosecuted under the FCPA.[50]

Domestic Concerns—15 U.S.C. § 78dd-2

The FCPA also applies to "domestic concerns." [51] A domestic concern is any individual who is a citizen, national, or resident of the United States, or any corporation, partnership, association, joint-stock company, business trust, unincorporated organization, or sole proprietorship that is organized under the laws of the United States or its states, territories, possessions, or commonwealths or that has its principal place of business in the United States.[52] Officers, directors, employees, agents, or stockholders acting on behalf of a domestic concern, including foreign nationals or companies, are also covered.[53]

Territorial Jurisdiction—15 U.S.C. § 78dd-3

The FCPA also applies to certain foreign nationals or entities that are not issuers or domestic concerns.[54] Since 1998, the FCPA's anti-bribery provisions have applied to foreign persons and foreign non-issuer entities that, either directly or through an agent, engage in *any* act in furtherance of a corrupt payment (or an offer, promise, or authorization to pay) while in the territory of the United States.[55] Also, officers, directors, employees, agents, or stockholders acting on behalf of such persons or entities may be subject to the FCPA's anti-bribery prohibitions.[56]

What Jurisdictional Conduct Triggers the Anti-Bribery Provisions?

The FCPA's anti-bribery provisions can apply to conduct both inside and outside the United States. Issuers and domestic concerns—as well as their officers, directors, employees, agents, or stockholders—may be prosecuted for using the U.S. mails or any means or instrumentality of interstate commerce in furtherance of a corrupt payment to a foreign official. The Act defines "interstate commerce" as "trade, commerce, transportation, or communication among the several States, or between any foreign country and any State or between any State and any place or ship outside thereof ...."[57] The term also includes the *intrastate* use of any interstate means of communication, or any other interstate instrumentality.[58] Thus, placing a telephone call or sending an e-mail, text message, or fax from, to, or through the United States involves interstate commerce—as does sending a wire transfer from or to a U.S. bank or otherwise using the U.S. banking system, or traveling across state borders or internationally to or from the United States.

Those who are not issuers or domestic concerns may be prosecuted under the FCPA if they directly, or through an agent, engage in *any* act in furtherance of a corrupt payment while in the territory of the United States, regardless of whether they utilize the U.S. mails or a means or instrumentality of interstate commerce.[59] Thus, for example, a foreign national who attends a meeting in the United States that furthers a foreign bribery scheme may be subject to prosecution, as may any co-conspirators, even if they did not themselves attend the meeting. A foreign national or company may also be liable under the FCPA if it aids and abets, conspires with, or acts as an agent of an issuer or domestic concern, regardless of whether the foreign national or company itself takes any action in the United States.[60]

In addition, under the "alternative jurisdiction" provision of the FCPA enacted in 1998, U.S. companies or persons may be subject to the anti-bribery provisions even if they act outside the United States.[61] The 1998 amendments to the FCPA expanded the jurisdictional coverage of the Act by establishing an alternative basis for jurisdiction, that is, jurisdiction based on the nationality principle.[62] In particular, the 1998 amendments removed the requirement that there be a use of interstate commerce (e.g., wire, email, telephone call) for acts in furtherance of a corrupt payment to a foreign official by U.S. companies and persons occurring wholly outside of the United States.[63]

What Is Covered?—The Business Purpose Test

The FCPA applies only to payments intended to induce or influence a foreign official to use his or her position "in order to assist ... in obtaining or retaining business for or with, or directing business to, any person."[64] This requirement is known as the "business purpose test" and is broadly interpreted.[65]

Not surprisingly, many enforcement actions involve bribes to obtain or retain government contracts.[66] The FCPA also prohibits bribes in the conduct of business or

Hypothetical: FCPA Jurisdiction

Company A, a Delaware company with its principal place of business in New York, is a large energy company that operates globally, including in a number of countries that have a high risk of corruption, such as Foreign Country. Company A's shares are listed on a national U.S. stock exchange. Company A enters into an agreement with a European company (EuroCo) to submit a joint bid to the Oil Ministry to build a refinery in Foreign Country. EuroCo is not an issuer.

Executives of Company A and EuroCo meet in New York to discuss how to win the bid and decide to hire a purported third-party consultant (Intermediary) and have him use part of his "commission" to bribe high-ranking officials within the Oil Ministry. Intermediary meets with executives at Company A and EuroCo in New York to finalize the scheme. Eventually, millions of dollars in bribes are funneled from the United States and Europe through Intermediary to high-ranking officials at the Oil Ministry, and Company A and EuroCo win the contract. A few years later, a front page article alleging that the contract was procured through bribery appears in Foreign Country, and DOJ and SEC begin investigating whether the FCPA was violated.

Based on these facts, which entities fall within the FCPA's jurisdiction?

All of the entities easily fall within the FCPA's jurisdiction. Company A is both an "issuer" and a "domestic concern" under the FCPA, and Intermediary is an "agent" of Company A. EuroCo and Intermediary are also subject to the FCPA's territorial jurisdiction provision based on their conduct while in the United States. Moreover, even if EuroCo and Intermediary had never taken any actions in the territory of the United States, they can still be subject to jurisdiction under a traditional application of conspiracy law and may be subject to substantive FCPA charges under *Pinkerton* liability, namely, being liable for the reasonably foreseeable substantive FCPA crimes committed by a co-conspirator in furtherance of the conspiracy.

Examples of Actions Taken to Obtain or Retain Business

- Winning a contract
- Influencing the procurement process
- Circumventing the rules for importation of products
- Gaining access to non-public bid tender information
- Evading taxes or penalties
- Influencing the adjudication of lawsuits or enforcement actions
- Obtaining exceptions to regulations
- Avoiding contract termination

to gain a business advantage.[67] For example, bribe payments made to secure favorable tax treatment, to reduce or eliminate customs duties, to obtain government action to prevent competitors from entering a market, or to circumvent a licensing or permit requirement, all satisfy the business purpose test.[68]

In 2004, the U.S. Court of Appeals for the Fifth Circuit addressed the business purpose test in *United States v. Kay* and held that bribes paid to obtain favorable tax treatment—which reduced a company's customs duties and sales taxes on imports—could constitute payments made to "obtain or retain" business within the meaning of the FCPA.[69] The court explained that in enacting the FCPA, "Congress meant to prohibit a range of payments wider than only those that directly influence the acquisition or retention of government contracts or similar commercial or industrial arrangements."[70] The *Kay* court found that "[t]he congressional target was bribery paid to engender assistance in improving the business opportunities of the payor or his beneficiary, irrespective of whether that assistance be direct or indirect, and irrespective of whether it be related to administering the law, awarding, extending, or renewing a contract, or executing or preserving an agreement."[71] Accordingly, *Kay* held that payments to obtain favorable tax treatment can, under appropriate circumstances, violate the FCPA:

> Avoiding or lowering taxes reduces operating costs and thus increases profit margins, thereby freeing up funds that the business is otherwise legally obligated to expend. And this, in turn, enables it to take any number of actions to the disadvantage of competitors. Bribing foreign officials to lower taxes and customs duties certainly *can* provide an unfair advantage over competitors and thereby be of assistance to the payor in obtaining or retaining business.
>
> * * *
>
> [W]e hold that Congress intended for the FCPA to apply broadly to payments intended to assist the payor, either directly or indirectly, in obtaining or retaining business for some person, and that bribes paid to foreign tax officials to secure illegally reduced customs and tax liability constitute a type of payment that can fall within this broad coverage.[72]

Paying Bribes to Customs Officials

In 2010, a global freight forwarding company and six of its corporate customers in the oil and gas industry resolved charges that they paid bribes to customs officials. The companies bribed customs officials in more than ten countries in exchange for such benefits as:

- evading customs duties on imported goods
- improperly expediting the importation of goods and equipment
- extending drilling contracts and lowering tax assessments
- obtaining false documentation related to temporary import permits for drilling rigs
- enabling the release of drilling rigs and other equipment from customs officials

In many instances, the improper payments at issue allowed the company to carry out its existing business, which fell within the FCPA's prohibition on corrupt payments made for the purpose of "retaining" business. The seven companies paid a total of more than $235 million in civil and criminal sanctions and disgorgement.

In short, while the FCPA does not cover every type of bribe paid around the world for every purpose, it does apply broadly to bribes paid to help obtain or retain business, which can include payments made to secure a wide variety of unfair business advantages.[73]

What Does "Corruptly" Mean?

To violate the FCPA, an offer, promise, or authorization of a payment, or a payment, to a government official must be made "corruptly."[74] As Congress noted when adopting the FCPA, the word "corruptly" means an intent or desire to wrongfully influence the recipient:

> The word "corruptly" is used in order to make clear that the offer, payment, promise, or gift, must be intended to induce the recipient to misuse his official position; for example, wrongfully to direct business to the payor or his client, to obtain preferential legislation or regulations, or to induce a foreign official to fail to perform an official function.[75]

Where corrupt intent is present, the FCPA prohibits paying, offering, or promising to pay money or anything of value (or authorizing the payment or offer).[76] By focusing on intent, the FCPA does not require that a corrupt act succeed in its purpose.[77] Nor must the foreign official actually solicit, accept, or receive the corrupt payment for the bribe payor to be liable.[78] For example, in one case, a specialty chemical company promised Iraqi government officials approximately $850,000 in bribes for an upcoming contract. Although the company did not, in the end, make the payment (the scheme was thwarted by the U.S. government's investigation), the company still violated the FCPA and was held accountable.[79]

Also, as long as the offer, promise, authorization, or payment is made corruptly, the actor need not know the identity of the recipient; the attempt is sufficient.[80] Thus, an executive who authorizes others to pay "whoever you need to" in a foreign government to obtain a contract has violated the FCPA—even if no bribe is ultimately offered or paid.

What Does "Willfully" Mean and When Does It Apply?

In order for an individual defendant to be criminally liable under the FCPA, he or she must act "willfully."[81] Proof of willfulness is not required to establish corporate criminal or civil liability,[82] though proof of corrupt intent is.

The term "willfully" is not defined in the FCPA, but it has generally been construed by courts to connote an act committed voluntarily and purposefully, and with a bad purpose, i.e., with "knowledge that [a defendant] was doing a 'bad' act under the general rules of law."[83] As the Supreme Court explained in *Bryan v. United States*, "[a]s a general matter, when used in the criminal context, a 'willful' act is one undertaken with a 'bad purpose.' In other words, in order to establish a 'willful' violation of a statute, 'the Government must prove that the defendant acted with knowledge that his conduct was unlawful.'"[84]

Notably, as both the Second Circuit and Fifth Circuit Courts of Appeals have found, the FCPA does not require the government to prove that a defendant was specifically aware of the FCPA or knew that his conduct violated the FCPA.[85] To be guilty, a defendant must act with a bad purpose, i.e., know generally that his conduct is unlawful.

What Does "Anything of Value" Mean?

In enacting the FCPA, Congress recognized that bribes can come in many shapes and sizes—a broad range of unfair benefits[86]—and so the statute prohibits the corrupt "offer, payment, promise to pay, or authorization of the payment of any money, or offer, gift, promise to give, or authorization of the giving of *anything of value* to" a foreign official.[87]

An improper benefit can take many forms. While cases often involve payments of cash (sometimes in the guise of "consulting fees" or "commissions" given through intermediaries), others have involved travel expenses and expensive gifts. Like the domestic bribery statute, the FCPA does not contain a minimum threshold amount for corrupt gifts or payments.[88] Indeed, what might be considered a modest payment in the United States could be a larger and much more significant amount in a foreign country.

Regardless of size, for a gift or other payment to violate the statute, the payor must have corrupt intent—that is, the intent to improperly influence the government official. The corrupt intent requirement protects companies that engage in the ordinary and legitimate promotion of their businesses while targeting conduct that seeks to improperly induce officials into misusing their positions. Thus, it is difficult to envision any scenario in which the provision of cups of coffee, taxi fare, or company promotional items of nominal value would ever evidence corrupt intent, and neither DOJ nor SEC has ever pursued an investigation on the basis of such conduct. Moreover, as in all areas of federal law enforcement, DOJ and SEC exercise discretion in deciding which cases promote law enforcement priorities and justify investigation. Certain patterns, however, have emerged: DOJ's and SEC's anti-bribery enforcement actions have focused on small payments and gifts only when they comprise part of a systemic or long-standing course of conduct that evidences a scheme to corruptly pay foreign officials to obtain or retain business. These assessments are necessarily fact specific.

Cash

The most obvious form of corrupt payment is large amounts of cash. In some instances, companies have maintained cash funds specifically earmarked for use as bribes. One U.S. issuer headquartered in Germany disbursed corrupt payments from a corporate "cash desk" and used offshore bank accounts to bribe government officials to win contracts.[89] In another instance, a four-company joint venture used its agent to pay $5 million in bribes to a Nigerian political party.[90] The payments were made to the agent in suitcases of cash (typically in $1 million installments), and, in one instance, the trunk of a car when the cash did not fit into a suitcase.[91]

Gifts, Travel, Entertainment, and Other Things of Value

A small gift or token of esteem or gratitude is often an appropriate way for business people to display respect for each other. Some hallmarks of appropriate gift-giving are when the gift is given openly and transparently, properly recorded in the giver's books and records, provided only to reflect esteem or gratitude, and permitted under local law.

Items of nominal value, such as cab fare, reasonable meals and entertainment expenses, or company promotional items, are unlikely to improperly influence an official, and, as a result, are not, without more, items that have resulted in enforcement action by DOJ or SEC. The larger or more extravagant the gift, however, the more likely it was given with an improper purpose. DOJ and SEC enforcement cases thus have involved single instances of large, extravagant gift-giving (such as sports cars, fur coats, and other luxury items) as well as widespread gifts of smaller items as part of a pattern of bribes.[92] For example, in one case brought by DOJ and SEC, a defendant gave a government official a country club membership fee and a generator, as well as household maintenance expenses, payment of cell phone bills, an automobile worth $20,000, and limousine services. The same official also received $250,000 through a third-party agent.[93]

In addition, a number of FCPA enforcement actions have involved the corrupt payment of travel and entertainment expenses. Both DOJ and SEC have brought cases where these types of expenditures occurred in conjunction with other conduct reflecting systemic bribery or other clear indicia of corrupt intent.

A case involving a California-based telecommunications company illustrates the types of improper travel and entertainment expenses that may violate the FCPA.[94] Between 2002 and 2007, the company spent nearly $7 million on approximately 225 trips for its customers in order to obtain systems contracts in China, including for employees of Chinese state-owned companies to travel to popular tourist destinations in the United States.[95] Although the trips were purportedly for the individuals to conduct training at

Examples of Improper Travel and Entertainment

- a $12,000 birthday trip for a government decision-maker from Mexico that included visits to wineries and dinners
- $10,000 spent on dinners, drinks, and entertainment for a government official
- a trip to Italy for eight Iraqi government officials that consisted primarily of sightseeing and included $1,000 in "pocket money" for each official
- a trip to Paris for a government official and his wife that consisted primarily of touring activities via a chauffeur-driven vehicle

the company's facilities, in reality, no training occurred on many of these trips and the company had no facilities at those locations. Approximately $670,000 of the $7 million was falsely recorded as "training" expenses.[96]

Likewise, a New Jersey-based telecommunications company spent millions of dollars on approximately 315 trips for Chinese government officials, ostensibly to inspect factories and train the officials in using the company's equipment.[97] In reality, during many of these trips, the officials spent little or no time visiting the company's facilities, but instead visited tourist destinations such as Hawaii, Las Vegas, the Grand Canyon, Niagara Falls, Disney World, Universal Studios, and New York City.[98] Some of the trips were characterized as "factory inspections" or "training" with government customers but consisted primarily or entirely of sightseeing to locations chosen by the officials, typically lasting two weeks and costing between $25,000 and $55,000 per trip. In some instances, the company gave the government officials $500 to $1,000 per day in spending money and paid all lodging, transportation, food, and entertainment expenses. The company either failed to record these expenses or improperly recorded them as "consulting fees" in its corporate books and records. The company also failed to implement appropriate internal controls to monitor the provision of travel and other things of value to Chinese government officials.[99]

Companies also may violate the FCPA if they give payments or gifts to third parties, like an official's family members, as an indirect way of corruptly influencing a foreign official. For example, one defendant paid personal bills and provided airline tickets to a cousin and close friend of the foreign official whose influence the defendant sought in obtaining contracts.[100] The defendant was convicted at trial and received a prison sentence.[101]

As part of an effective compliance program, a company should have clear and easily accessible guidelines and processes in place for gift-giving by the company's directors, officers, employees, and agents. Though not necessarily appropriate for every business, many larger companies have automated gift-giving clearance processes and have set clear monetary thresholds for gifts along with annual limitations, with limited exceptions for gifts approved by appropriate management. Clear guidelines and processes can be an effective and efficient means for controlling gift-giving, deterring improper gifts, and protecting corporate assets.

The FCPA does not prohibit gift-giving. Rather, just like its domestic bribery counterparts, the FCPA prohibits the payments of bribes, including those disguised as gifts.

Charitable Contributions

Companies often engage in charitable giving as part of legitimate local outreach. The FCPA does not prohibit charitable contributions or prevent corporations from acting as good corporate citizens. Companies, however, cannot use the pretense of charitable contributions as a way to funnel bribes to government officials.

For example, a pharmaceutical company used charitable donations to a small local castle restoration charity headed by a foreign government official to induce the official to direct business to the company. Although the charity was a bona fide charitable organization, internal documents at the pharmaceutical company's subsidiary established that the payments were not viewed as charitable contributions but rather as "dues" the subsidiary was required to pay for assistance from the government official. The payments constituted a significant portion of the subsidiary's total promotional donations budget and were structured to allow the subsidiary to exceed its authorized limits. The payments

Hypothetical: Gifts, Travel, and Entertainment

Company A is a large U.S. engineering company with global operations in more than 50 countries, including a number that have a high risk of corruption, such as Foreign Country. Company A's stock is listed on a national U.S. stock exchange. In conducting its business internationally, Company A's officers and employees come into regular contact with foreign officials, including officials in various ministries and state-owned entities. At a trade show, Company A has a booth at which it offers free pens, hats, t-shirts, and other similar promotional items with Company A's logo. Company A also serves free coffee, other beverages, and snacks at the booth. Some of the visitors to the booth are foreign officials.

Is Company A in violation of the FCPA?

No. These are legitimate, bona fide expenditures made in connection with the promotion, demonstration, or explanation of Company A's products or services. There is nothing to suggest corrupt intent here. The FCPA does not prevent companies from promoting their businesses in this way or providing legitimate hospitality, including to foreign officials. Providing promotional items with company logos or free snacks as set forth above is an appropriate means of providing hospitality and promoting business. Such conduct has never formed the basis for an FCPA enforcement action.

At the trade show, Company A invites a dozen current and prospective customers out for drinks, and pays the moderate bar tab. Some of the current and prospective customers are foreign officials under the FCPA. Is Company A in violation of the FCPA?

No. Again, the FCPA was not designed to prohibit all forms of hospitality to foreign officials. While the cost here may be more substantial than the beverages, snacks, and promotional items provided at the booth, and the invitees specifically selected, there is still nothing to suggest corrupt intent.

Two years ago, Company A won a long-term contract to supply goods and services to the state-owned Electricity Commission in Foreign Country. The Electricity Commission is 100% owned, controlled, and operated by the government of Foreign Country, and employees of the Electricity Commission are subject to Foreign Country's domestic bribery laws. Some Company A executives are in Foreign Country for meetings with officials of the Electricity Commission. The General Manager of the Electricity Commission was recently married, and during the trip Company A executives present a moderately priced crystal vase to the General Manager as a wedding gift and token of esteem. Is Company A in violation of the FCPA?

No. It is appropriate to provide reasonable gifts to foreign officials as tokens of esteem or gratitude. It is important that such gifts be made openly and transparently, properly recorded in a company's books and records, and given only where appropriate under local law, customary where given, and reasonable for the occasion.

During the course of the contract described above, Company A periodically provides training to Electricity Commission employees at its facilities in Michigan. The training is paid for by the Electricity Commission as part of the contract. Senior officials of the Electricity Commission inform Company A that they want to inspect the facilities and ensure that the training is working well. Company A pays for the airfare, hotel, and transportation for the

(cont'd)

Electricity Commission senior officials to travel to Michigan to inspect Company A's facilities. Because it is a lengthy international flight, Company A agrees to pay for business class airfare, to which its own employees are entitled for lengthy flights. The foreign officials visit Michigan for several days, during which the senior officials perform an appropriate inspection. Company A executives take the officials to a moderately priced dinner, a baseball game, and a play. Do any of these actions violate the FCPA?

No. Neither the costs associated with training the employees nor the trip for the senior officials to the Company's facilities in order to inspect them violates the FCPA. Reasonable and bona fide promotional expenditures do not violate the FCPA. Here, Company A is providing training to the Electricity Commission's employees and is hosting the Electricity Commission senior officials. Their review of the execution and performance of the contract is a legitimate business purpose. Even the provision of business class airfare is reasonable under the circumstances, as are the meals and entertainment, which are only a small component of the business trip.

Would this analysis be different if Company A instead paid for the senior officials to travel first-class with their spouses for an all-expenses-paid, week-long trip to Las Vegas, where Company A has no facilities?

Yes. This conduct almost certainly violates the FCPA because it evinces a corrupt intent. Here, the trip does not appear to be designed for any legitimate business purpose, is extravagant, includes expenses for the officials' spouses, and therefore appears to be designed to corruptly curry favor with the foreign government officials. Moreover, if the trip were booked as a legitimate business expense—such as the provision of training at its facilities—Company A would also be in violation of the FCPA's accounting provisions. Furthermore, this conduct suggests deficiencies in Company A's internal controls.

Company A's contract with the Electricity Commission is going to expire, and the Electricity Commission is offering the next contract through its tender process. An employee of the Electricity Commission contacts Company A and offers to provide Company A with confidential, non-public bid information from Company A's competitors if Company A will pay for a vacation to Paris for him and his girlfriend. Employees of Company A accede to the official's request, pay for the vacation, receive the confidential bid information, and yet still do not win the contract. Has Company A violated the FCPA?

Yes. Company A has provided things of value to a foreign official for the purpose of inducing the official to misuse his office and to gain an improper advantage. It does not matter that it was the foreign official who first suggested the illegal conduct or that Company A ultimately was not successful in winning the contract. This conduct would also violate the FCPA's accounting provisions if the trip were booked as a legitimate business expense and suggests deficiencies in Company A's internal controls.

also were not in compliance with the company's internal policies, which provided that charitable donations generally should be made to healthcare institutions and relate to the practice of medicine.[102]

Proper due diligence and controls are critical for charitable giving. In general, the adequacy of measures taken to prevent misuse of charitable donations will depend on a risk-based analysis and the specific facts at hand. In Opinion Procedure Release No. 10-02, DOJ described the due diligence and controls that can minimize the likelihood of an FCPA violation. In that matter, a Eurasian-based subsidiary of a U.S. non-governmental organization was asked by an agency of a foreign government to make a grant to a local microfinance institution (MFI) as a prerequisite to the subsidiary's transformation to bank status. The subsidiary proposed contributing $1.42 million to a local MFI to satisfy the request. The subsidiary undertook an extensive, three-stage due diligence process to select the proposed grantee and imposed significant controls on the proposed grant, including ongoing monitoring and auditing, earmarking funds for capacity building, prohibiting compensation of board members, and implementing anti-corruption compliance provisions. DOJ explained that it would not take any enforcement action because the company's due diligence and the controls it planned to put in place sufficed to prevent an FCPA violation.

Other opinion releases also address charitable-type grants or donations. Under the facts presented in those releases, DOJ approved the proposed grant or donation,[103] based on due diligence measures and controls such as:

- certifications by the recipient regarding compliance with the FCPA;[104]
- due diligence to confirm that none of the recipient's officers were affiliated with the foreign government at issue;[105]
- a requirement that the recipient provide audited financial statements;[106]
- a written agreement with the recipient restricting the use of funds;[107]
- steps to ensure that the funds were transferred to a valid bank account;[108]
- confirmation that the charity's commitments were met before funds were disbursed;[109] and
- on-going monitoring of the efficacy of the program.[110]

Legitimate charitable giving does not violate the FCPA. Compliance with the FCPA merely requires that charitable giving not be used as a vehicle to conceal payments made to corruptly influence foreign officials.

Five Questions to Consider When Making Charitable Payments in a Foreign Country:

1. What is the purpose of the payment?
2. Is the payment consistent with the company's internal guidelines on charitable giving?
3. Is the payment at the request of a foreign official?
4. Is a foreign official associated with the charity and, if so, can the foreign official make decisions regarding your business in that country?
5. Is the payment conditioned upon receiving business or other benefits?

Who Is a Foreign Official?

The FCPA's anti-bribery provisions apply to corrupt payments made to (1) "any foreign official"; (2) "any foreign political party or official thereof"; (3) "any candidate for foreign political office"; or (4) any person, while knowing that all or a portion of the payment will be offered, given, or promised to an individual falling within one of these three categories.[111] Although the statute distinguishes between a "foreign official," "foreign political party or official thereof," and "candidate for foreign political office," the term "foreign official" in this guide generally refers to an individual falling within any of these three categories.

The FCPA defines "foreign official" to include:

> any officer or employee of a foreign government or any department, agency, or instrumentality thereof,

> or of a public international organization, or any person acting in an official capacity for or on behalf of any such government or department, agency, or instrumentality, or for or on behalf of any such public international organization.[112]

As this language makes clear, the FCPA broadly applies to corrupt payments to "any" officer or employee of a foreign government and to those acting on the foreign government's behalf.[113] The FCPA thus covers corrupt payments to low-ranking employees and high-level officials alike.[114]

The FCPA prohibits payments to foreign *officials*, not to foreign *governments*.[115] That said, companies contemplating contributions or donations to foreign governments should take steps to ensure that no monies are used for corrupt purposes, such as the personal benefit of individual foreign officials.

Department, Agency, or Instrumentality of a Foreign Government

Foreign officials under the FCPA include officers or employees of a department, agency, or instrumentality of a foreign government. When a foreign government is organized in a fashion similar to the U.S. system, what constitutes a government department or agency is typically clear (e.g., a ministry of energy, national security agency, or transportation authority).[116] However, governments can be organized in very different ways.[117] Many operate through state-owned and state-controlled entities, particularly in such areas as aerospace and defense manufacturing, banking and finance, healthcare and life sciences, energy and extractive industries, telecommunications, and transportation.[118] By including officers or employees of agencies and instrumentalities within the definition of "foreign official," the FCPA accounts for this variability.

The term "instrumentality" is broad and can include state-owned or state-controlled entities. Whether a particular entity constitutes an "instrumentality" under the FCPA requires a fact-specific analysis of an entity's ownership, control, status, and function.[119] A number of courts have approved final jury instructions providing a non-exclusive list of factors to be considered:

- the foreign state's extent of ownership of the entity;
- the foreign state's degree of control over the entity (including whether key officers and directors of the entity are, or are appointed by, government officials);
- the foreign state's characterization of the entity and its employees;
- the circumstances surrounding the entity's creation;
- the purpose of the entity's activities;
- the entity's obligations and privileges under the foreign state's law;
- the exclusive or controlling power vested in the entity to administer its designated functions;
- the level of financial support by the foreign state (including subsidies, special tax treatment, government-mandated fees, and loans);
- the entity's provision of services to the jurisdiction's residents;
- whether the governmental end or purpose sought to be achieved is expressed in the policies of the foreign government; and
- the general perception that the entity is performing official or governmental functions.[120]

Companies should consider these factors when evaluating the risk of FCPA violations and designing compliance programs.

DOJ and SEC have pursued cases involving instrumentalities since the time of the FCPA's enactment and have long used an analysis of ownership, control, status, and function to determine whether a particular entity is an agency or instrumentality of a foreign government. For example, the second-ever FCPA case charged by DOJ involved a California company that paid bribes through a Mexican corporation to two executives of a state-owned

Mexican national oil company. [121] And in the early 1980s, DOJ and SEC brought cases involving a $1 million bribe to the chairman of Trinidad and Tobago's racing authority.[122]

DOJ and SEC continue to regularly bring FCPA cases involving bribes paid to employees of agencies and instrumentalities of foreign governments. In one such case, the subsidiary of a Swiss engineering company paid bribes to officials of a state-owned and controlled electricity commission. The commission was created by, owned by, and controlled by the Mexican government, and it had a monopoly on the transmission and distribution of electricity in Mexico. Many of the commission's board members were cabinet-level government officials, and the director was appointed by Mexico's president.[123] Similarly, in another recent case, Miami telecommunications executives were charged with paying bribes to employees of Haiti's state-owned and controlled telecommunications company. The telecommunications company was 97% owned and 100% controlled by the Haitian government, and its director was appointed by Haiti's president.[124]

While no one factor is dispositive or necessarily more important than another, as a practical matter, an entity is unlikely to qualify as an instrumentality if a government does not own or control a majority of its shares. However, there are circumstances in which an entity would qualify as an instrumentality absent 50% or greater foreign government ownership, which is reflected in the limited number of DOJ or SEC enforcement actions brought in such situations. For example, in addition to being convicted of funneling millions of dollars in bribes to two sitting presidents in two different countries, a French issuer's three subsidiaries were convicted of paying bribes to employees of a Malaysian telecommunications company that was 43% owned by Malaysia's Ministry of Finance. There, notwithstanding its minority ownership stake in the company, the Ministry held the status of a "special shareholder," had veto power over all major expenditures, and controlled important operational decisions.[125] In addition, most senior company officers were political appointees, including the Chairman and Director, the Chairman of the Board of the Tender Committee, and the Executive Director.[126] Thus, despite the Malaysian government having a minority shareholder position, the company was an instrumentality of the Malaysian government as the government nevertheless had substantial control over the company.

Companies and individuals should also remember that, whether an entity is an instrumentality of a foreign government or a private entity, commercial (i.e., private-to-private) bribery may still violate the FCPA's accounting provisions, the Travel Act, anti-money laundering laws, and other federal or foreign laws. Any type of corrupt payment thus carries a risk of prosecution.

Public International Organizations

In 1998, the FCPA was amended to expand the definition of "foreign official" to include employees and representatives of public international organizations.[127] A "public international organization" is any organization designated as such by Executive Order under the International Organizations Immunities Act, 22 U.S.C. § 288, or any other organization that the President so designates.[128] Currently, public international organizations include entities such as the World Bank, the International Monetary Fund, the World Intellectual Property Organization, the World Trade Organization, the OECD, the Organization of American States, and numerous others. A comprehensive list of organizations designated as "public international organizations" is contained in 22 U.S.C. § 288 and can also be found on the U.S. Government Printing Office website at http://www.gpo.gov/fdsys/.

How Are Payments to Third Parties Treated?

The FCPA expressly prohibits corrupt payments made through third parties or intermediaries.[129] Specifically, it covers payments made to "any person, while knowing that all or a portion of such money or thing of value will be offered, given, or promised, directly or indirectly,"[130] to a foreign official. Many companies doing business in a foreign country retain a local individual or company to help them conduct business. Although these foreign agents may provide entirely legitimate advice regarding local customs and procedures and may help facilitate business transactions, companies should be aware of the risks involved in engaging third-party agents or intermediaries. The fact that a bribe is paid by a third party does not eliminate the potential for criminal or civil FCPA liability.[131]

For instance, a four-company joint venture used two agents—a British lawyer and a Japanese trading company—to bribe Nigerian government officials in order to win a series of liquefied natural gas construction projects.[132] Together, the four multi-national corporations and the Japanese trading company paid a combined $1.7 billion in civil and criminal sanctions for their decade-long bribery scheme. In addition, the subsidiary of one of the companies pleaded guilty and a number of individuals, including the British lawyer and the former CEO of one of the companies' subsidiaries, received significant prison terms.

Similarly, a medical device manufacturer entered into a deferred prosecution agreement as the result of corrupt payments it authorized its local Chinese distributor to pay to Chinese officials.[133] Another company, a manufacturer of specialty chemicals, committed multiple FCPA violations through its agents in Iraq: a Canadian national and the Canadian's companies. Among other acts, the Canadian national paid and promised to pay more than $1.5 million in bribes to officials of the Iraqi Ministry of Oil to secure sales of a fuel additive. Both the company and the Canadian national pleaded guilty to criminal charges and resolved civil enforcement actions by SEC. [134]

In another case, the U.S. subsidiary of a Swiss freight forwarding company was charged with paying bribes on behalf of its customers in several countries.[135] Although the U.S. subsidiary was not an issuer under the FCPA, it was an "agent" of several U.S. issuers and was thus charged directly with violating the FCPA. Charges against the freight forwarding company and seven of its customers resulted in over $236.5 million in sanctions.[136]

Because Congress anticipated the use of third-party agents in bribery schemes—for example, to avoid actual knowledge of a bribe—it defined the term "knowing" in a way that prevents individuals and businesses from avoiding liability by putting "any person" between themselves and the foreign officials.[137] Under the FCPA, a person's state of mind is "knowing" with respect to conduct, a circumstance, or a result if the person:

- is aware that [he] is engaging in such conduct, that such circumstance exists, or that such result is substantially certain to occur; or
- has a firm belief that such circumstance exists or that such result is substantially certain to occur.[138]

Thus, a person has the requisite knowledge when he is aware of a high probability of the existence of such circumstance, unless the person actually believes that such circumstance does not exist.[139] As Congress made clear, it meant to impose liability not only on those with actual knowledge of wrongdoing, but also on those who purposefully avoid actual knowledge:

> [T]he so-called "head-in-the-sand" problem—variously described in the pertinent authorities as "conscious disregard," "willful blindness" or "deliberate ignorance"—should be covered so that management officials could not take refuge from the Act's prohibitions by their unwarranted obliviousness to any action (or inaction), language or other "signaling device" that should reasonably alert them of the "high probability" of an FCPA violation.[140]

Common red flags associated with third parties include:

- excessive commissions to third-party agents or consultants;
- unreasonably large discounts to third-party distributors;
- third-party "consulting agreements" that include only vaguely described services;
- the third-party consultant is in a different line of business than that for which it has been engaged;
- the third party is related to or closely associated with the foreign official;

- the third party became part of the transaction at the express request or insistence of the foreign official;
- the third party is merely a shell company incorporated in an offshore jurisdiction; and
- the third party requests payment to offshore bank accounts.

Businesses may reduce the FCPA risks associated with third-party agents by implementing an effective compliance program, which includes due diligence of any prospective foreign agents.

United States v. Kozeny, *et al.*

In December 2011, the U.S. Court of Appeals for the Second Circuit upheld a conscious avoidance instruction given during the 2009 trial of a businessman who was convicted of conspiring to violate the FCPA's anti-bribery provisions by agreeing to make payments to Azeri officials in a scheme to encourage the privatization of the Azerbaijan Republic's state oil company. The court of appeals found that the instruction did not lack a factual predicate, citing evidence and testimony at trial demonstrating that the defendant knew corruption was pervasive in Azerbaijan; that he was aware of his business partner's reputation for misconduct; that he had created two U.S. companies in order to shield himself and other investors from potential liability for payments made in violation of the FCPA; and that the defendant expressed concerns during a conference call about whether his business partner and company were bribing officials.

The court of appeals also rejected the defendant's contention that the conscious avoidance charge had improperly permitted the jury to convict him based on negligence, explaining that ample evidence in the record showed that the defendant had "serious concerns" about the legality of his partner's business practices "and worked to avoid learning exactly what [he] was doing," and noting that the district court had specifically instructed the jury not to convict based on negligence.

What Affirmative Defenses Are Available?

The FCPA's anti-bribery provisions contain two affirmative defenses: (1) that the payment was lawful under the written laws of the foreign country (the "local law" defense), and (2) that the money was spent as part of demonstrating a product or performing a contractual obligation (the "reasonable and bona fide business expenditure" defense). Because these are affirmative defenses, the defendant bears the burden of proving them.

The Local Law Defense

For the local law defense to apply, a defendant must establish that "the payment, gift, offer, or promise of anything of value that was made, was lawful under the written laws and regulations of the foreign official's, political party's, party official's, or candidate's country."[141] The defendant must establish that the payment was lawful under the foreign country's written laws and regulations at the time of the offense. In creating the local law defense in 1988, Congress sought "to make clear that the absence of written laws in a foreign official's country would not by itself be sufficient to satisfy this defense."[142] Thus, the fact that bribes may not be prosecuted under local law is insufficient to establish the defense. In practice, the local law defense arises infrequently, as the written laws and regulations of countries rarely, if ever, permit corrupt payments. Nevertheless, if a defendant can establish that conduct that otherwise falls within the scope of the FCPA's anti-bribery provisions was lawful under written, local law, he or she would have a defense to prosecution.

In *United States v. Kozeny*, the defendant unsuccessfully sought to assert the local law defense regarding the law of Azerbaijan. The parties disputed the contents and applicability of Azeri law, and each presented expert reports and testimony on behalf of their conflicting interpretations. The court ruled that the defendant could not invoke the FCPA's affirmative defense because Azeri law did not actually legalize the bribe payment. The court concluded that an exception under Azeri law relieving bribe payors who voluntarily disclose bribe payments to the authorities of criminal liability did not make the bribes legal.[143]

Reasonable and Bona Fide Expenditures

The FCPA allows companies to provide reasonable and bona fide travel and lodging expenses to a foreign official, and it is an affirmative defense where expenses are directly related to the promotion, demonstration, or explanation of a company's products or services, or are related to a company's execution or performance of a contract with a foreign government or agency.[144] Trips that are primarily for personal entertainment purposes, however, are not bona fide business expenses and may violate the FCPA's anti-bribery provisions.[145] Moreover, when expenditures, bona fide or not, are mischaracterized in a company's books and records, or where unauthorized or improper expenditures occur due to a failure to implement adequate internal controls, they may also violate the FCPA's accounting provisions. Purposeful mischaracterization of expenditures may also, of course, indicate a corrupt intent.

DOJ and SEC have consistently recognized that businesses, both foreign and domestic, are permitted to pay for reasonable expenses associated with the promotion of their products and services or the execution of existing contracts. In addition, DOJ has frequently provided guidance about legitimate promotional and contract-related expenses—addressing travel and lodging expenses in particular—through several opinion procedure releases. Under the circumstances presented in those releases,[146] DOJ opined that the following types of expenditures on behalf of foreign officials did not warrant FCPA enforcement action:

- travel and expenses to visit company facilities or operations;
- travel and expenses for training; and
- product demonstration or promotional activities, including travel and expenses for meetings.

Whether any particular payment is a bona fide expenditure necessarily requires a fact-specific analysis. But the following non-exhaustive list of safeguards, compiled from several releases, may be helpful to businesses in evaluating whether a particular expenditure is appropriate or may risk violating the FCPA:

- Do not select the particular officials who will participate in the party's proposed trip or program[147] or else select them based on pre-determined, merit-based criteria.[148]
- Pay all costs directly to travel and lodging vendors and/or reimburse costs only upon presentation of a receipt.[149]
- Do not advance funds or pay for reimbursements in cash.[150]
- Ensure that any stipends are reasonable approximations of costs likely to be incurred[151] and/or that expenses are limited to those that are necessary and reasonable.[152]
- Ensure the expenditures are transparent, both within the company and to the foreign government.[153]
- Do not condition payment of expenses on any action by the foreign official.[154]
- Obtain written confirmation that payment of the expenses is not contrary to local law.[155]
- Provide no additional compensation, stipends, or spending money beyond what is necessary to pay for actual expenses incurred.[156]
- Ensure that costs and expenses on behalf of the foreign officials will be accurately recorded in the company's books and records.[157]

In sum, while certain expenditures are more likely to raise red flags, they will not give rise to prosecution if they are (1) reasonable, (2) bona fide, and (3) directly related to (4) the promotion, demonstration, or explanation of products or services or the execution or performance of a contract.[158]

What Are Facilitating or Expediting Payments?

The FCPA's bribery prohibition contains a narrow exception for "facilitating or expediting payments" made in furtherance of routine governmental action.[159] The facilitating payments exception applies only when a payment is made to further "routine governmental action" that involves non-discretionary acts.[160] Examples of "routine governmental action" include processing visas, providing police protection or mail service, and supplying utilities like phone service, power, and water. Routine government action does *not* include a decision to award new business or to continue business with a particular party.[161] Nor does it include acts that are within an official's discretion or that would constitute misuse of an official's office.[162] Thus, paying an official a small amount to have the power turned on at a factory might be a facilitating payment; paying an inspector to ignore the fact that the company does not have a valid permit to operate the factory would not be a facilitating payment.

Examples of "Routine Governmental Action"

An action which is ordinarily and commonly performed by a foreign official in—

- obtaining permits, licenses, or other official documents to qualify a person to do business in a foreign country;
- processing governmental papers, such as visas and work orders;
- providing police protection, mail pickup and delivery, or scheduling inspections associated with contract performance or inspections related to transit of goods across country;
- providing phone service, power and water supply, loading and unloading cargo, or protecting perishable products or commodities from deterioration; or
- actions of a similar nature.

Whether a payment falls within the exception is not dependent on the size of the payment, though size can be telling, as a large payment is more suggestive of corrupt intent to influence a non-routine governmental action. But, like the FCPA's anti-bribery provisions more generally, the facilitating payments exception focuses on the *purpose* of the payment rather than its value. For instance, an Oklahoma-based corporation violated the FCPA when its subsidiary paid Argentine customs officials approximately $166,000 to secure customs clearance for equipment and materials that lacked required certifications or could not be imported under local law and to pay a lower-than-applicable duty rate. The company's Venezuelan subsidiary had also paid Venezuelan customs officials approximately $7,000 to permit the importation and exportation of equipment and materials not in compliance with local regulations and to avoid a full inspection of the imported goods.[163] In another case, three subsidiaries of a global supplier of oil drilling products and services were criminally charged with authorizing an agent to make at least 378 corrupt payments (totaling approximately $2.1 million) to Nigerian Customs Service officials for preferential treatment during the customs process, including the reduction or elimination of customs duties.[164]

Labeling a bribe as a "facilitating payment" in a company's books and records does not make it one. A Swiss offshore drilling company, for example, recorded payments to its customs agent in the subsidiary's "facilitating payment" account, even though company personnel believed the payments were, in fact, bribes. The company was charged with violating both the FCPA's anti-bribery and accounting provisions.[165]

Although true facilitating payments are not illegal under the FCPA, they may still violate local law in the countries where the company is operating, and the OECD's Working Group on Bribery recommends that all countries encourage companies to prohibit or discourage facilitating payments, which the United States has done regularly.[166] In addition, other countries' foreign bribery laws, such as the United Kingdom's, may not contain an exception for facilitating payments.[167] Individuals and companies should therefore be aware that although true facilitating payments are permissible under the FCPA, they may still subject a company or individual to sanctions. As with any expenditure, facilitating payments may still violate the FCPA if they are not properly recorded in an issuer's books and records.[168]

Hypothetical: Facilitating Payments

Company A is a large multi-national mining company with operations in Foreign Country, where it recently identified a significant new ore deposit. It has ready buyers for the new ore but has limited capacity to get it to market. In order to increase the size and speed of its ore export, Company A will need to build a new road from its facility to the port that can accommodate larger trucks. Company A retains an agent in Foreign Country to assist it in obtaining the required permits, including an environmental permit, to build the road. The agent informs Company A's vice president for international operations that he plans to make a one-time small cash payment to a clerk in the relevant government office to ensure that the clerk files and stamps the permit applications expeditiously, as the agent has experienced delays of three months when he has not made this "grease" payment. The clerk has no discretion about whether to file and stamp the permit applications once the requisite filing fee has been paid. The vice president authorizes the payment.

A few months later, the agent tells the vice president that he has run into a problem obtaining a necessary environmental permit. It turns out that the planned road construction would adversely impact an environmentally sensitive and protected local wetland. While the problem could be overcome by rerouting the road, such rerouting would cost Company A $1 million more and would slow down construction by six months. It would also increase the transit time for the ore and reduce the number of monthly shipments. The agent tells the vice president that he is good friends with the director of Foreign Country's Department of Natural Resources and that it would only take a modest cash payment to the director and the "problem would go away." The vice president authorizes the payment, and the agent makes it. After receiving the payment, the director issues the permit, and Company A constructs its new road through the wetlands.

Was the payment to the clerk a violation of the FCPA?

No. Under these circumstances, the payment to the clerk would qualify as a facilitating payment, since it is a one-time, small payment to obtain a routine, non-discretionary governmental service that Company A is entitled to receive (i.e., the stamping and filing of the permit application). However, while the payment may qualify as an exception to the FCPA's anti-bribery provisions, it may violate other laws, both in Foreign Country and elsewhere. In addition, if the payment is not accurately recorded, it could violate the FCPA's books and records provision.

Was the payment to the director a violation of the FCPA?

Yes. The payment to the director of the Department of Natural Resources was in clear violation of the FCPA, since it was designed to corruptly influence a foreign official into improperly approving a permit. The issuance of the environmental permit was a discretionary act, and indeed, Company A should not have received it. Company A, its vice president, and the local agent may all be prosecuted for authorizing and paying the bribe.

Does the FCPA Apply to Cases of Extortion or Duress?

Situations involving extortion or duress will not give rise to FCPA liability because a payment made in response to true extortionate demands under imminent threat of physical harm cannot be said to have been made with corrupt intent or for the purpose of obtaining or retaining business.[169] In enacting the FCPA, Congress recognized that real-world situations might arise in which a business is compelled to pay an official in order to avoid threats to health and safety. As Congress explained, "a payment to an official to keep an oil rig from being dynamited should not be held to be made with the requisite corrupt purpose."[170]

Mere *economic* coercion, however, does not amount to extortion. As Congress noted when it enacted the FCPA: "The defense that the payment was demanded on the part of a government official as a price for gaining entry into a market or to obtain a contract would not suffice since at some point the U.S. company would make a conscious decision whether or not to pay a bribe."[171] The fact that the payment was "first proposed by the recipient ... does not alter the corrupt purpose on the part of the person paying the bribe."[172]

This distinction between extortion and economic coercion was recognized by the court in *United States v. Kozeny*. There, the court concluded that although an individual who makes a payment under duress (i.e., upon threat of physical harm) will not be criminally liable under the FCPA,[173] a bribe payor who claims payment was demanded as a price for gaining market entry or obtaining a contract "cannot argue that he lacked the intent to bribe the official because he made the 'conscious decision' to pay the official."[174] While the bribe payor in this situation "could have turned his back and walked away," in the oil rig example, "he could not."[175]

Businesses operating in high-risk countries may face real threats of violence or harm to their employees, and payments made in response to imminent threats to health or safety do not violate the FCPA.[176] If such a situation arises, and to ensure the safety of its employees, companies should immediately contact the appropriate U.S. embassy for assistance.

Principles of Corporate Liability for Anti-Bribery Violations

General principles of corporate liability apply to the FCPA. Thus, a company is liable when its directors, officers, employees, or agents, acting within the scope of their employment, commit FCPA violations intended, at least in part, to benefit the company.[177] Similarly, just as with any other statute, DOJ and SEC look to principles of parent-subsidiary and successor liability in evaluating corporate liability.

Parent-Subsidiary Liability

There are two ways in which a parent company may be liable for bribes paid by its subsidiary. First, a parent may have participated sufficiently in the activity to be directly liable for the conduct—as, for example, when it directed its subsidiary's misconduct or otherwise directly participated in the bribe scheme.

Second, a parent may be liable for its subsidiary's conduct under traditional agency principles. The fundamental characteristic of agency is control.[178] Accordingly, DOJ and SEC evaluate the parent's control—including the parent's knowledge and direction of the subsidiary's actions, both generally and in the context of the specific transaction—when evaluating whether a subsidiary is an agent of the parent. Although the formal relationship between the parent and subsidiary is important in this analysis, so are the practical realities of how the parent and subsidiary actually interact.

If an agency relationship exists, a subsidiary's actions and knowledge are imputed to its parent.[179] Moreover, under traditional principles of *respondeat superior*, a company is liable for the acts of its agents, including its employees, undertaken within the scope of their employment and intended, at least in part, to benefit the company.[180] Thus, if an agency relationship exists between a parent and a subsidiary, the parent is liable for bribery committed by the subsidiary's employees. For example, SEC brought an administrative action against a parent for bribes paid by the president of its indirect, wholly owned subsidiary. In that matter, the subsidiary's president reported directly to the CEO of the parent issuer, and the issuer routinely identified the president as a member of its senior management in its annual filing with SEC and in annual reports. Additionally, the parent's legal department approved the retention of the third-party agent through whom the bribes were arranged despite a lack of documented due diligence and an agency agreement that violated corporate policy; also, an official of the parent approved one of the payments to the third-party agent.[181] Under these circumstances, the parent company had sufficient knowledge and control of its subsidiary's actions to be liable under the FCPA.

Successor Liability

Companies acquire a host of liabilities when they merge with or acquire another company, including those arising out of contracts, torts, regulations, and statutes. As a general legal matter, when a company merges with or acquires another company, the successor company assumes the predecessor company's liabilities.[182] Successor liability is an integral component of corporate law and, among other things, prevents companies from avoiding liability by reorganizing.[183] Successor liability applies to all kinds of civil and criminal liabilities,[184] and FCPA violations are no exception. Whether successor liability applies to a particular corporate transaction depends on the facts and the applicable state, federal, and foreign law. Successor liability does not, however, create liability where none existed before. For example, if an issuer were to acquire a foreign company that was not previously subject to the FCPA's jurisdiction, the mere acquisition of that foreign company would not retroactively create FCPA liability for the acquiring issuer.

DOJ and SEC encourage companies to conduct pre-acquisition due diligence and improve compliance programs and internal controls after acquisition for a variety of reasons. First, due diligence helps an acquiring company to accurately value the target company. Contracts obtained through bribes may be legally unenforceable, business obtained illegally may be lost when bribe payments are stopped, there may be liability for prior illegal conduct, and the prior corrupt acts may harm the acquiring company's reputation and future business prospects. Identifying these issues before an acquisition allows companies to better evaluate any potential post-acquisition liability and thus properly assess the target's value.[185] Second, due diligence reduces the risk that the acquired company will continue to pay bribes. Proper pre-acquisition due diligence can identify business and regional risks and can also lay the foundation for a swift and successful post-acquisition integration into the acquiring company's corporate control and compliance environment. Third, the consequences of potential violations uncovered through due diligence can be handled by the parties in an orderly and efficient manner through negotiation of the costs and responsibilities for the investigation and remediation. Finally, comprehensive due diligence demonstrates a genuine commitment to uncovering and preventing FCPA violations.

In a significant number of instances, DOJ and SEC have declined to take action against companies that voluntarily disclosed and remediated conduct and cooperated with DOJ and SEC in the merger and acquisition context.[186] And DOJ and SEC have only taken action against successor companies in limited circumstances, generally in cases involving egregious and sustained violations or where the successor company directly participated in the violations or failed to stop the misconduct from continuing after the acquisition. In one case, a U.S.-based issuer was charged with books and records and internal controls violations for continuing a kickback scheme originated by its predecessor.[187] Another recent case involved a merger between two tobacco leaf merchants, where prior to the merger each company committed FCPA violations through its foreign subsidiaries, involving multiple countries over the course of many years. At each company, the bribes were directed by the parent company's senior management. The two issuers then merged to form a new public company. Under these circumstances—the merger of two public companies that had each engaged in

Practical Tips to Reduce FCPA Risk in Mergers and Acquisitions

Companies pursuing mergers or acquisitions can take certain steps to identify and potentially reduce FCPA risks:

- **M&A Opinion Procedure Release Requests:** One option is to seek an opinion from DOJ in anticipation of a potential acquisition, such as occurred with Opinion Release 08-02. That case involved special circumstances, namely, severely limited pre-acquisition due diligence available to the potential acquiring company, and, because it was an opinion release (i.e., providing certain assurances by DOJ concerning prospective conduct), it necessarily imposed demanding standards and prescriptive timeframes in return for specific assurances from DOJ, which SEC, as a matter of discretion, also honors. Thus, obtaining an opinion from DOJ can be a good way to address specific due diligence challenges, but, because of the nature of such an opinion, it will likely contain more stringent requirements than may be necessary in all circumstances.
- **M&A Risk-Based FCPA Due Diligence and Disclosure:** As a practical matter, most acquisitions will typically not require the type of prospective assurances contained in an opinion from DOJ. DOJ and SEC encourage companies engaging in mergers and acquisitions to: (1) conduct thorough risk-based FCPA and anti-corruption due diligence on potential new business acquisitions; (2) ensure that the acquiring company's code of conduct and compliance policies and procedures regarding the FCPA and other anti-corruption laws apply as quickly as is practicable to newly acquired businesses or merged entities; (3) train the directors, officers, and employees of newly acquired businesses or merged entities, and when appropriate, train agents and business partners, on the FCPA and other relevant anti-corruption laws and the company's code of conduct and compliance policies and procedures; (4) conduct an FCPA-specific audit of all newly acquired or merged businesses as quickly as practicable; and (5) disclose any corrupt payments discovered as part of its due diligence of newly acquired entities or merged entities. DOJ and SEC will give meaningful credit to companies who undertake these actions, and, in appropriate circumstances, DOJ and SEC may consequently decline to bring enforcement actions.

bribery—both the new entity and the foreign subsidiaries were liable under the FCPA. The new parent entered into a non-prosecution agreement with DOJ and settled a civil action with SEC, while the company's subsidiaries, which also merged, pleaded guilty.[188]

More often, DOJ and SEC have pursued enforcement actions against the predecessor company (rather than the acquiring company), particularly when the acquiring company uncovered and timely remedied the violations or when the government's investigation of the predecessor company preceded the acquisition. In one such case, an Ohio-based health care company's due diligence of an acquisition target uncovered FCPA violations by the target's subsidiary, and, before the merger was completed, the subsidiary's violations were disclosed to DOJ and SEC. The subsidiary pleaded guilty and paid a $2 million criminal fine,[189] the acquisition target settled with SEC and paid a $500,000 civil penalty,[190] and no successor liability was sought against the acquiring entity. In another case, a Pennsylvania-based issuer that supplied heating and air conditioning products and services was subject to an ongoing investigation by DOJ and SEC at the time that it was acquired; DOJ and SEC resolved enforcement actions only against the predecessor company, which had by that time become a wholly owned subsidiary of the successor company.[191]

DOJ and SEC have also brought actions only against a predecessor company where its FCPA violations are discovered after acquisition. For example, when a Florida-based U.S. company discovered in post-acquisition due diligence that the telecommunications company (a domestic concern) it had acquired had engaged in foreign bribery, the successor company disclosed the FCPA violations to DOJ. It then conducted an internal investigation, cooperated fully with DOJ, and took appropriate remedial action—including terminating senior management at the acquired company. No enforcement action was taken against the successor, but the predecessor company pleaded guilty to one count of violating the FCPA and agreed to pay a $2 million fine.[192] Later, four executives from the predecessor company were convicted of FCPA violations, three of whom received terms of imprisonment.[193]

On occasion, when an enforcement action has been taken against a predecessor company, the successor seeks assurances that it will not be subject to a future enforcement action. In one such case, a Dutch predecessor resolved FCPA charges with DOJ through a deferred prosecution agreement.[194] While both the predecessor and successor signed the agreement, which included a commitment to ongoing cooperation and an improved compliance program, only the predecessor company was charged; in signing the agreement, the successor company gained the certainty of conditional release from criminal liability, even though it was not being pursued for FCPA violations.[195] In another case, after a Connecticut-based company uncovered FCPA violations by a California company it sought to acquire, both companies voluntarily disclosed the conduct to DOJ and SEC.[196] The predecessor company resolved its criminal liability through a non-prosecution agreement with DOJ that included an $800,000 monetary penalty and also settled with SEC, paying a total of $1.1 million in disgorgement, pre-judgment interest, and civil penalties. The successor company proceeded with the acquisition and separately entered into a non-prosecution agreement with DOJ in which it agreed, among other things, to ensure full performance of the predecessor company's non-prosecution agreement. This agreement provided certainty to the successor concerning its FCPA liability.[197]

Importantly, a successor company's voluntary disclosure, appropriate due diligence, and implementation of an effective compliance program may also decrease the likelihood of an enforcement action regarding an acquired company's post-acquisition conduct when pre-acquisition due diligence is not possible.[198]

Hypothetical: Successor Liability Where Acquired Company Was Not Previously Subject to the FCPA

Company A is a Delaware corporation with its principal offices in the United States and whose shares are listed on a national U.S. exchange. Company A is considering acquiring Foreign Company, which is not an issuer or a domestic concern. Foreign Company takes no actions within the United States that would make it subject to territorial jurisdiction. Company A's proposed acquisition would make Foreign Company a subsidiary of Company A.

Scenario 1:

Prior to acquiring Foreign Company, Company A engages in extensive due diligence of Foreign Company, including: (1) having its legal, accounting, and compliance departments review Foreign Company's sales and financial data, its customer contracts, and its third-party and distributor agreements; (2) performing a risk-based analysis of Foreign Company's customer base; (3) performing an audit of selected transactions engaged in by Foreign Company; and (4) engaging in discussions with Foreign Company's general counsel, vice president of sales, and head of internal audit regarding all corruption risks, compliance efforts, and any other corruption-related issues that have surfaced at Foreign Company over the past ten years. This due diligence aims to determine whether Foreign Company has appropriate anti-corruption and compliance policies in place, whether Foreign Company's employees have been adequately trained regarding those policies, how Foreign Company ensures that those policies are followed, and what remedial actions are taken if the policies are violated.

During the course of its due diligence, Company A learns that Foreign Company has made several potentially improper payments in the form of an inflated commission to a third-party agent in connection with a government contract with Foreign Country. Immediately after the acquisition, Company A discloses the conduct to DOJ and SEC, suspends and terminates those employees and the third-party agent responsible for the payments, and makes certain that the illegal payments have stopped. It also quickly integrates Foreign Company into Company A's own robust internal controls, including its anti-corruption and compliance policies, which it communicates to its new employees through required online and in-person training in the local language. Company A also requires Foreign Company's third-party distributors and other agents to sign anti-corruption certifications, complete training, and sign new contracts that incorporate FCPA and anti-corruption representations and warranties and audit rights.

Based on these facts, could DOJ or SEC prosecute Company A?

No. Although DOJ and SEC have jurisdiction over Company A because it is an issuer, neither could pursue Company A for conduct that occurred prior to its acquisition of Foreign Company. As Foreign Company was neither an issuer nor a domestic concern and was not subject to U.S. territorial jurisdiction, DOJ and SEC have no jurisdiction over its pre-acquisition misconduct. The acquisition of a company does not create jurisdiction where none existed before.

Importantly, Company A's extensive pre-acquisition due diligence allowed it to identify and halt the corruption. As there was no continuing misconduct post-acquisition, the FCPA was not violated.

Scenario 2:

Company A performs only minimal and pro forma pre-acquisition due diligence. It does not conduct a risk-based analysis, and its review of Foreign Company's data, contracts, and third-party and distributor agreements is cursory. Company A acquires Foreign Company and makes it a wholly owned subsidiary. Although Company A circulates its compliance policies to all new personnel after the acquisition, it does not translate the compliance policies into the local language or train its new personnel or third-party agents on anti-corruption issues.

A few months after the acquisition, an employee in Company A's international sales office (Sales Employee) learns from a legacy Foreign Company employee that for years the government contract that generated most of Foreign Company's revenues depended on inflated commissions to a third-party agent "to make the right person happy at Foreign Government Agency." Sales Employee is told that unless the payments continue the business will likely be lost, which would mean that Company A's new acquisition would quickly become a financial failure. The payments continue for two

(cont'd)

years after the acquisition. After another employee of Company A reports the long-running bribe scheme to a director at Foreign Government Agency, Company A stops the payments and DOJ and SEC investigate.

Based on these facts, would DOJ or SEC charge Company A?

Yes. DOJ and SEC have prosecuted companies like Company A in similar circumstances. Any charges would not, however, be premised upon successor liability, but rather on Company A's post-acquisition bribe payments, which themselves created criminal and civil liability for Company A.

Scenario 3:

Under local law, Company A's ability to conduct pre-acquisition due diligence on Foreign Company is limited. In the due diligence it does conduct, Company A determines that Foreign Company is doing business in high-risk countries and in high-risk industries but finds no red flags specific to Foreign Company's operations. Post-acquisition, Company A conducts extensive due diligence and determines that Foreign Company had paid bribes to officials with Foreign Government Agency. Company A takes prompt action to remediate the problem, including following the measures set forth in Opinion Procedure Release No. 08-02. Among other actions, it voluntarily discloses the misconduct to DOJ and SEC, ensures all bribes are immediately stopped, takes remedial action against all parties involved in the corruption, and quickly incorporates Foreign Company into a robust compliance program and Company A's other internal controls.

Based on these facts, would DOJ or SEC prosecute Company A?

DOJ and SEC have declined to prosecute companies like Company A in similar circumstances. Companies can follow the measures set forth in Opinion Procedure Release No. 08-02, or seek their own opinions, where adequate pre-acquisition due diligence is not possible.

Hypothetical: Successor Liability Where Acquired Company Was Already Subject to the FCPA

Both Company A and Company B are Delaware corporations with their principal offices in the United States. Both companies' shares are listed on a national U.S. exchange.

Scenario 1:

Company A is considering acquiring several of Company B's business lines. Prior to the acquisition, Company A engages in extensive due diligence, including: (1) having its legal, accounting, and compliance departments review Company B's sales and financial data, its customer contracts, and its third-party and distributor agreements; (2) performing a risk-based analysis of Company B's customer base; (3) performing an audit of selected transactions engaged in by Company B; and (4) engaging in discussions with Company B's general counsel, vice president of sales, and head of internal audit regarding all corruption risks, compliance efforts, and any other major corruption-related issues that have surfaced at Company B over the past ten years. This due diligence aims to determine whether Company B has appropriate anti-corruption and compliance policies in place, whether Company B's employees have been adequately trained regarding those policies, how Company B ensures that those policies are followed, and what remedial actions are taken if the policies are violated.

During the course of its due diligence, Company A learns that Company B has made several potentially improper payments in connection with a government contract with Foreign Country. As a condition of the acquisition, Company A requires Company B to disclose the misconduct to the government. Company A makes certain that the illegal payments

(cont'd)

have stopped and quickly integrates Company B's business lines into Company A's own robust internal controls, including its anti-corruption and compliance policies, which it communicates to its new employees through required online and in-person training in the local language. Company A also requires Company B's third-party distributors and other agents to sign anti-corruption certifications, complete training, and sign new contracts that incorporate FCPA and anti-corruption representations and warranties and audit rights.

Based on these facts, would DOJ or SEC prosecute?

DOJ and SEC have declined to prosecute companies like Company A in similar circumstances. DOJ and SEC encourage companies like Company A to conduct extensive FCPA due diligence. By uncovering the corruption, Company A put itself in a favorable position, and, because the corrupt payments have stopped, Company A has no continuing liability. Whether DOJ and SEC might charge Company B depends on facts and circumstances beyond the scope of this hypothetical. DOJ would consider its *Principles of Federal Prosecution of Business Organizations* and SEC would consider the factors contained in the *Seaboard Report*, both of which are discussed in Chapter 5. In general, the more egregious and long-standing the corruption, the more likely it is that DOJ and SEC would prosecute Company B. In certain limited circumstances, DOJ and SEC have in the past declined to bring charges against acquired companies, recognizing that acquiring companies may bear much of the reputational damage and costs associated with such charges.

Scenario 2:

Company A plans to acquire Company B. Although, as in Scenario 1, Company A conducts extensive due diligence, it does not uncover the bribery until after the acquisition. Company A then makes certain that the illegal payments stop and voluntarily discloses the misconduct to DOJ and SEC. It quickly integrates Company B into Company A's own robust internal controls, including its anti-corruption and compliance policies, which it communicates to its new employees through required online and in-person training in the local language. Company A also requires Company B's third-party distributors and other agents to sign anti-corruption certifications, complete training, and sign new contracts that incorporate FCPA and anti-corruption representations and warranties and audit rights.

Based on these facts, would DOJ or SEC prosecute?

Absent unusual circumstances not contemplated by this hypothetical, DOJ and SEC are unlikely to prosecute Company A for the pre-acquisition misconduct of Company B, provided that Company B still exists in a form that would allow it to be prosecuted separately (e.g., Company B is a subsidiary of Company A). DOJ and SEC understand that no due diligence is perfect and that society benefits when companies with strong compliance programs acquire and improve companies with weak ones. At the same time, however, neither the liability for corruption—nor the harms caused by it—are eliminated when one company acquires another. Whether DOJ and SEC will pursue a case against Company B (or, in unusual circumstances, Company A) will depend on consideration of all the factors in the *Principles of Federal Prosecution of Business Organizations* and the *Seaboard Report*, respectively.

Scenario 3:

Company A merges with Company B, which is in the same line of business and interacts with the same Foreign Government customers, and forms Company C. Due diligence before the merger reveals that both Company A and Company B have been engaging in similar bribery. In both cases, the bribery was extensive and known by high-level management within the companies.

Based on these facts, would DOJ or SEC prosecute?

Yes. DOJ and SEC have prosecuted companies like Company C on the basis of successor liability. Company C is a combination of two companies that both violated the FCPA, and their merger does not eliminate their liability. In addition, since Company C is an ongoing concern, DOJ and SEC may impose a monitorship to ensure that the bribery has ceased and a compliance program is developed to prevent future misconduct.

Additional Principles of Criminal Liability for Anti-Bribery Violations: Aiding and Abetting and Conspiracy

Under federal law, individuals or companies that aid or abet a crime, including an FCPA violation, are as guilty as if they had directly committed the offense themselves. The aiding and abetting statute provides that whoever "commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission," or "willfully causes an act to be done which if directly performed by him or another would be an offense against the United States," is punishable as a principal.[199] Aiding and abetting is not an independent crime, and the government must prove that an underlying FCPA violation was committed.[200]

Individuals and companies, including foreign nationals and companies, may also be liable for conspiring to violate the FCPA—i.e., for *agreeing* to commit an FCPA violation—even if they are not, or could not be, independently charged with a substantive FCPA violation. For instance, a foreign, non-issuer company could be convicted of conspiring with a domestic concern to violate the FCPA. Under certain circumstances, it could also be held liable for the domestic concern's substantive FCPA violations under *Pinkerton v. United States*, which imposes liability on a defendant for reasonably foreseeable crimes committed by a co-conspirator in furtherance of a conspiracy that the defendant joined.[201]

A foreign company or individual may be held liable for aiding and abetting an FCPA violation or for conspiring to violate the FCPA, even if the foreign company or individual did not take any act in furtherance of the corrupt payment while in the territory of the United States. In conspiracy cases, the United States generally has jurisdiction over all the conspirators where at least one conspirator is an issuer, domestic concern, or commits a reasonably foreseeable overt act within the United States.[202] For example, if a foreign company or individual conspires to violate the FCPA with someone who commits an overt act within the United States, the United States can prosecute the foreign company or individual for the conspiracy. The same principle applies to aiding and abetting violations. For instance, even though they took no action in the United States, Japanese and European companies were charged with conspiring with and aiding and abetting a domestic concern's FCPA violations.[203]

Additional Principles of Civil Liability for Anti-Bribery Violations: Aiding and Abetting and Causing

Both companies and individuals can be held civilly liable for aiding and abetting FCPA anti-bribery violations if they knowingly or recklessly provide substantial assistance to a violator.[204] Similarly, in the administrative proceeding context, companies and individuals may be held liable for causing FCPA violations.[205] This liability extends to the subsidiaries and agents of U.S. issuers.

In one case, the U.S. subsidiary of a Swiss freight forwarding company was held civilly liable for paying bribes on behalf of its customers in several countries.[206] Although the U.S. subsidiary was not an issuer for purposes of the FCPA, it was an "agent" of several U.S. issuers. By paying bribes on behalf of its issuers' customers, the subsidiary both directly violated and aided and abetted the issuers' FCPA violations.

What Is the Applicable Statute of Limitations?

Statute of Limitations in Criminal Cases

The FCPA's anti-bribery and accounting provisions do not specify a statute of limitations for criminal actions. Accordingly, the general five-year limitations period set forth in 18 U.S.C. § 3282 applies to substantive criminal violations of the Act.[207]

In cases involving FCPA conspiracies, the government may be able to reach conduct occurring before the five-year limitations period applicable to conspiracies under 18 U.S.C. § 371. For conspiracy offenses, the government generally need prove only that one act in furtherance of the conspiracy occurred during the limitations period, thus enabling the government to prosecute bribes paid or accounting violations occurring more than five years prior to the filing of formal charges.[208]

There are at least two ways in which the applicable limitations period is commonly extended. First, companies or individuals cooperating with DOJ may enter into a tolling agreement that voluntarily extends the limitations period. Second, under 18 U.S.C. § 3292, the government may seek a court order suspending the statute of limitations posed in a criminal case for up to three years in order to obtain evidence from foreign countries. Generally, the suspension period begins when the official request is made by the U.S. government to the foreign authority and ends on the date on which the foreign authority takes final action on the request.[209]

Statute of Limitations in Civil Actions

In civil cases brought by SEC, the statute of limitations is set by 28 U.S.C. § 2462, which provides for a five-year limitation on any "suit or proceeding for the enforcement of any civil fine, penalty, or forfeiture." The five-year period begins to run "when the claim first accrued." The five-year limitations period applies to SEC actions seeking civil penalties, but it does not prevent SEC from seeking equitable remedies, such as an injunction or the disgorgement of ill-gotten gains, for conduct pre-dating the five-year period. In cases against individuals who are not residents of the United States, the statute is tolled for any period when the defendants are not "found within the United States in order that proper service may be made thereon."[210] Furthermore, companies or individuals cooperating with SEC may enter into tolling agreements that voluntarily extend the limitations period.

chapter 2

The FCPA:

Anti-Bribery Provisions

THE FCPA: ACCOUNTING PROVISIONS

In addition to the anti-bribery provisions, the FCPA contains accounting provisions applicable to public companies. The FCPA's accounting provisions operate in tandem with the anti-bribery provisions[211] and prohibit off-the-books accounting. Company management and investors rely on a company's financial statements and internal accounting controls to ensure transparency in the financial health of the business, the risks undertaken, and the transactions between the company and its customers and business partners. The accounting provisions are designed to "strengthen the accuracy of the corporate books and records and the reliability of the audit process which constitute the foundations of our system of corporate disclosure."[212]

The accounting provisions consist of two primary components. First, under the "books and records" provision, issuers must make and keep books, records, and accounts that, in reasonable detail, accurately and fairly reflect an issuer's transactions and dispositions of an issuer's assets.[213] Second, under the "internal controls" provision, issuers must devise and maintain a system of internal accounting controls sufficient to assure management's control, authority, and responsibility over the firm's assets.[214] These components, and other aspects of the accounting provisions, are discussed in greater detail below.

Although the accounting provisions were originally enacted as part of the FCPA, they do not apply only to bribery-related violations. Rather, the accounting provisions ensure that all public companies account for all of their assets and liabilities accurately and in reasonable detail, and they form the backbone for most accounting fraud and issuer disclosure cases brought by DOJ and SEC.[215]

> In the past, "corporate bribery has been concealed by the falsification of corporate books and records" and the accounting provisions "remove[] this avenue of coverup."
>
> *Senate Report No. 95-114, at 3 (1977)*

What Is Covered by the Accounting Provisions?

Books and Records Provision

Bribes, both foreign and domestic, are often mischaracterized in companies' books and records. Section 13(b)(2)(A) of the Exchange Act (15 U.S.C. § 78m(b)(2)(A)), commonly called the "books and records" provision, requires issuers to "make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer."[216] The "in reasonable detail" qualification was adopted by Congress "in light of the concern that such a standard, if unqualified, might connote a degree of exactitude and precision which is unrealistic."[217] The addition of this phrase was intended to make clear "that the issuer's records should reflect transactions in conformity with accepted methods of recording economic events and effectively prevent off-the-books slush funds and payments of bribes."[218]

The term "reasonable detail" is defined in the statute as the level of detail that would "satisfy prudent officials in the conduct of their own affairs."[219] Thus, as Congress noted when it adopted this definition, "[t]he concept of reasonableness of necessity contemplates the weighing of a number of relevant factors, including the costs of compliance."[220]

Although the standard is one of reasonable detail, it is never appropriate to mischaracterize transactions in a company's books and records.[221] Bribes are often concealed under the guise of legitimate payments, such as commissions or consulting fees.

In instances where all the elements of a violation of the anti-bribery provisions are not met—where, for example, there was no use of interstate commerce—companies nonetheless may be liable if the improper payments are inaccurately recorded. Consistent with the FCPA's approach to prohibiting payments of any value that are made with a corrupt purpose, there is no materiality threshold under the books and records provision. In combination with the internal controls provision, the requirement that issuers maintain books and records that accurately and fairly reflect the corporation's transactions "assure[s], among other things, that the assets of the issuer are used for proper corporate purpose[s]."[222] As with the anti-bribery provisions, DOJ's and SEC's enforcement of the books and records provision has typically involved misreporting of either large bribe payments or widespread inaccurate recording of smaller payments made as part of a systemic pattern of bribery.

Bribes Have Been Mischaracterized As:

- Commissions or Royalties
- Consulting Fees
- Sales and Marketing Expenses
- Scientific Incentives or Studies
- Travel and Entertainment Expenses
- Rebates or Discounts
- After Sales Service Fees
- Miscellaneous Expenses
- Petty Cash Withdrawals
- Free Goods
- Intercompany Accounts
- Supplier / Vendor Payments
- Write-offs
- "Customs Intervention" Payments

Internal Controls Provision

The payment of bribes often occurs in companies that have weak internal control environments. Internal controls over financial reporting are the processes used by companies to provide reasonable assurances regarding the reliability of financial reporting and the preparation of financial statements. They include various components, such as: a control environment that covers the tone set by the organization regarding integrity and ethics; risk assessments; control activities that cover policies and procedures designed to ensure that management directives are carried out (e.g., approvals, authorizations, reconciliations, and segregation of duties); information and communication; and monitoring. Section 13(b)(2)(B) of the Exchange Act (15 U.S.C. § 78m(b)(2)(B)), commonly called the "internal controls" provision, requires issuers to:

> devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that—
> (i) transactions are executed in accordance with management's general or specific authorization;
> (ii) transactions are recorded as necessary (I) to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and (II) to maintain accountability for assets;
> (iii) access to assets is permitted only in accordance with management's general or specific authorization; and
> (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences ....[223]

Like the "reasonable detail" requirement in the books and records provision, the Act defines "reasonable assurances" as "such level of detail and degree of assurance as would satisfy prudent officials in the conduct of their own affairs."[224]

The Act does not specify a particular set of controls that companies are required to implement. Rather, the internal controls provision gives companies the flexibility to develop and maintain a system of controls that is appropriate to their particular needs and circumstances.

An effective compliance program is a critical component of an issuer's internal controls. Fundamentally, the design of a company's internal controls must take into account the operational realities and risks attendant to the company's business, such as: the nature of its products or services; how the products or services get to market; the nature of its work force; the degree of regulation; the extent of its government interaction; and the degree to which it has operations in countries with a high risk of corruption. A company's compliance program should be tailored to these differences. Businesses whose operations expose them to a high risk of corruption will necessarily devise and employ different internal controls than businesses that have a lesser exposure to corruption, just as a financial services company would be expected to devise and employ different internal controls than a manufacturer.

A 2008 case against a German manufacturer of industrial and consumer products illustrates a systemic internal controls problem involving bribery that was unprecedented in scale and geographic reach. From 2001 to 2007, the company created elaborate payment schemes—including slush

Companies with ineffective internal controls often face risks of embezzlement and self-dealing by employees, commercial bribery, export control problems, and violations of other U.S. and local laws.

funds, off-the-books accounts, and systematic payments to business consultants and other intermediaries—to facilitate bribery. Payments were made in ways that obscured their purpose and the ultimate recipients of the money. In some cases, employees obtained large amounts of cash from cash desks and then transported the cash in suitcases across international borders. Authorizations for some payments were placed on sticky notes and later removed to avoid any permanent record. The company made payments totaling approximately $1.36 billion through various mechanisms, including $805.5 million as bribes and $554.5 million for unknown purposes.[225] The company was charged with internal controls and books and records violations, along with anti-bribery violations, and paid over $1.6 billion to resolve the case with authorities in the United States and Germany.[226]

The types of internal control failures identified in the above example exist in many other cases where companies were charged with internal controls violations.[227] A 2010 case against a multi-national automobile manufacturer involved bribery that occurred over a long period of time in multiple countries.[228] In that case, the company used dozens of ledger accounts, known internally as "internal third party accounts," to maintain credit balances for the benefit of government officials.[229] The accounts were funded through several bogus pricing mechanisms, such as "price surcharges," "price inclusions," or excessive commissions.[230] The company also used artificial discounts or rebates on sales contracts to generate the money to pay the bribes.[231] The bribes also were made through phony sales intermediaries and corrupt business partners, as well as through the use of cash desks.[232] Sales executives would obtain cash from the company in amounts as high as hundreds of thousands of dollars, enabling the company to obscure the purpose and recipients of the money paid to government officials.[233] In addition to bribery charges, the company was charged with internal controls and books and records violations.

Good internal controls can prevent not only FCPA violations, but also other illegal or unethical conduct by the company, its subsidiaries, and its employees. DOJ and SEC have repeatedly brought FCPA cases that also involved other types of misconduct, such as financial fraud,[234] commercial bribery,[235] export controls violations,[236] and embezzlement or self-dealing by company employees.[237]

Potential Reporting and Anti-Fraud Violations

Issuers have reporting obligations under Section 13(a) of the Exchange Act, which requires issuers to file an annual report that contains comprehensive information about the issuer. Failure to properly disclose material information about the issuer's business, including material revenue, expenses, profits, assets, or liabilities related to bribery of foreign government officials, may give rise to anti-fraud and reporting violations under Sections 10(b) and 13(a) of the Exchange Act.

For example, a California-based technology company was charged with reporting violations, in addition to violations of the FCPA's anti-bribery and accounting provisions, when its bribery scheme led to material misstatements in its SEC filings.[238] The company was awarded contracts procured through bribery of Chinese officials that generated material revenue and profits. The revenue and profits helped the company offset losses incurred to develop new products expected to become the company's future source of revenue growth. The company improperly recorded the bribe payments as sales commission expenses in its books and records.

Companies engaged in bribery may also be engaged in activity that violates the anti-fraud and reporting provisions. For example, an oil and gas pipeline company and its employees engaged in a long-running scheme to use the company's petty cash accounts in Nigeria to make a variety of corrupt payments to Nigerian tax and court officials using false invoices.[239] The company and its employees also engaged in a fraudulent scheme to minimize the company's tax obligations in Bolivia by using false invoices to claim false offsets to its value-added tax obligations. The scheme resulted in material overstatements of the company's net income in the company's financial statements, which violated the Exchange Act's anti-fraud and reporting provisions. Both schemes also violated the books and records and internal controls provisions.

What Are Management's Other Obligations?

Sarbanes-Oxley Act of 2002

In 2002, in response to a series of accounting scandals involving U.S. companies, Congress enacted the Sarbanes-Oxley Act (Sarbanes-Oxley or SOX),[240] which strengthened the accounting requirements for issuers. All issuers must comply with Sarbanes-Oxley's requirements, several of which have FCPA implications.

SOX Section 302 (15 U.S.C. § 7241)—Responsibility of Corporate Officers for the Accuracy and Validity of Corporate Financial Reports

Section 302 of Sarbanes-Oxley requires that a company's "principal officers" (typically the Chief Executive Officer (CEO) and Chief Financial Officer (CFO)) take responsibility for and certify the integrity of their company's financial reports on a quarterly basis. Under Exchange Act Rule 13a-14, which is commonly called the "SOX certification" rule, each periodic report filed by an issuer must include a certification signed by the issuer's principal executive officer and principal financial officer that, among other things, states that: (i) based on the officer's knowledge, the report contains no material misstatements or omissions; (ii) based on the officer's knowledge, the relevant financial statements are accurate in all material respects; (iii) internal controls are properly designed; and (iv) the certifying officers have disclosed to the issuer's audit committee and auditors all significant internal control deficiencies.

SOX Section 404 (15 U.S.C. § 7262)—Reporting on the State of a Company's Internal Controls over Financial Reporting

Sarbanes-Oxley also strengthened a company's required disclosures concerning the state of its internal control over financial reporting. Under Section 404, issuers are required to present in their annual reports management's conclusion regarding the effectiveness of the company's internal controls over financial reporting. This statement must also assess the effectiveness of such internal controls and procedures. In addition, the company's independent auditor must attest to and report on its assessment of the effectiveness of the company's internal controls over financial reporting.

As directed by Section 404, SEC has adopted rules requiring issuers and their independent auditors to report to the public on the effectiveness of the company's internal controls over financial reporting.[241] These internal controls include those related to illegal acts and fraud—including acts of bribery—that could result in a material misstatement of the company's financial statements.[242] In 2007, SEC issued guidance on controls over financial reporting.[243]

SOX Section 802 (18 U.S.C. §§ 1519 and 1520)—Criminal Penalties for Altering Documents

Section 802 of Sarbanes-Oxley prohibits altering, destroying, mutilating, concealing, or falsifying records, documents, or tangible objects with the intent to obstruct, impede, or influence a potential or actual federal investigation. This section also prohibits any accountant from knowingly and willfully violating the requirement that all audit or review papers be maintained for a period of five years.

Who Is Covered by the Accounting Provisions?

Civil Liability for Issuers, Subsidiaries, and Affiliates

The FCPA's accounting provisions apply to every issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act or that is required to file annual or other periodic reports pursuant to Section 15(d) of the Exchange Act.[244] These provisions apply to any issuer whose securities trade on a national securities exchange in the United States, including foreign issuers with exchange-traded American Depository Receipts.[245] They also apply to companies whose stock trades in the over-the-counter market in the United States and which file periodic reports with the Commission, such as annual and quarterly reports. Unlike the FCPA's anti-bribery provisions, the accounting provisions do not apply to private companies.[246]

Although the FCPA's accounting requirements are directed at "issuers," an issuer's books and records include those of its consolidated subsidiaries and affiliates. An issuer's responsibility thus extends to ensuring that subsidiaries or affiliates under its control, including foreign subsidiaries and joint venture partners, comply with the accounting provisions. For instance, DOJ and SEC brought enforcement actions against a California company for violating the FCPA's accounting provisions when two Chinese joint ventures in which it was a partner paid more than $400,000 in bribes over a four-year period to obtain business in China.[247] Sales personnel in China made the illicit payments by obtaining cash advances from accounting personnel, who recorded the payments on the books as "business fees" or "travel and entertainment" expenses. Although the payments were made exclusively in China by Chinese employees of the joint venture, the California company failed to have adequate internal controls and failed to act on red flags indicating that its affiliates were engaged in bribery. The California company paid $1.15 million in civil disgorgement and a criminal monetary penalty of $1.7 million.

Companies may not be able to exercise the same level of control over a minority-owned subsidiary or affiliate as they do over a majority or wholly owned entity. Therefore, if a parent company owns less than 50% of a subsidiary or affiliate, the parent is only required to use its best efforts to cause the minority-owned subsidiary or affiliate to devise and maintain a system of internal accounting controls consistent with the issuer's own obligations under the FCPA.[248] In evaluating an issuer's good faith efforts, all the circumstances—including "the relative degree of the issuer's ownership of the domestic or foreign firm and the laws and practices governing the business operations of the country in which such firm is located"—are taken into account.[249]

Civil Liability for Individuals and Other Entities

Companies (including subsidiaries of issuers) and individuals may also face civil liability for aiding and abetting or causing an issuer's violation of the accounting provisions.[250] For example, in April 2010, SEC charged four individuals—a Country Manager, a Senior Vice President of Sales, a Regional Financial Director, and an International Controller of a U.S. issuer—for their roles in schemes to bribe Kyrgyz and Thai government officials to purchase tobacco from their employer. The complaint alleged that, among other things, the individuals aided and abetted the issuer company's violations of the books and records and internal controls provisions by "knowingly provid[ing] substantial assistance to" the parent company.[251] All four executives settled the charges against them, consenting to the entry of final judgments permanently enjoining them from violating the accounting and anti-bribery provisions, with two executives paying civil penalties.[252] As in other areas of federal securities law, corporate officers also can be held liable as control persons.[253]

Similarly, in October 2011, SEC brought an administrative action against a U.S. water valve manufacturer and a former employee of the company's Chinese subsidiary for violations of the FCPA's accounting provisions.[254] The Chinese subsidiary had made improper payments to employees of certain design institutes to create design specifications that favored the company's valve products. The payments were disguised as sales commissions in the subsidiary's books and records, thereby causing the U.S. issuer's books and records to be inaccurate. The general manager of the subsidiary, who approved the payments and knew or should have known that they were improperly recorded, was ordered to cease-and-desist from committing or causing violations of the accounting provisions, among other charges.[255]

Additionally, individuals and entities can be held directly civilly liable for falsifying an issuer's books and records or for circumventing internal controls. Exchange Act Rule 13b2-1 provides: "No person shall, directly or indirectly, falsify or cause to be falsified, any book, record or account subject to [the books and records provision] of the Securities Exchange Act."[256] And Section 13(b)(5) of the Exchange Act (15 U.S.C. § 78m(b)(5)) provides that "[n]o person shall knowingly circumvent or knowingly fail to implement a system of internal accounting controls or knowingly falsify any book, record, or account ...."[257] The Exchange Act defines "person" to include a "natural person, company, government, or political subdivision, agency, or instrumentality of a government."[258]

An issuer's officers and directors may also be held civilly liable for making false statements to a company's auditor. Exchange Act Rule 13b2-2 prohibits officers and directors from making (or causing to be made) materially false or misleading statements, including an omission of material facts, to an accountant. This liability arises in connection with any audit, review, or examination of a company's financial statements or in connection with the filing of any document with SEC.[259]

Finally, the principal executive and principal financial officer, or persons performing similar functions, can be held liable for violating Exchange Act Rule 13a-14 by signing false personal certifications required by SOX. Thus, for example, in January 2011, SEC charged the former CEO of a U.S. issuer for his role in schemes to bribe Iraqi government officials in connection with the United Nations Oil-For-Food Programme and to bribe Iraqi and Indonesian officials to purchase the company's fuel additives. There, the company used false invoices and sham consulting contracts to support large bribes that were passed on to foreign officials through an agent, and the bribes were mischaracterized as legitimate commissions and travel fees in the company's books and records. The officer directed and authorized the bribe payments and their false recording in the books and records. He also signed annual and quarterly SOX certifications in which he falsely represented that the company's financial statements were fairly presented and the company's internal controls sufficiently designed, as well as annual representations to the company's external auditors where he falsely stated that he complied with the company's code of ethics and was unaware of any violations of the code of ethics by anyone else. The officer was charged with aiding and abetting violations of the books and records and internal controls provisions, circumventing internal controls, falsifying books and records, making false statements to accountants, and signing false certifications.[260] He consented to the entry of an injunction and paid disgorgement and a civil penalty.[261] He also later pleaded guilty in the United Kingdom to conspiring to corrupt Iraqi and Indonesian officials.[262]

Criminal Liability for Accounting Violations

Criminal liability can be imposed on companies and individuals for knowingly failing to comply with the FCPA's books and records or internal controls provisions.[263] As with the FCPA's anti-bribery provisions, individuals are only subject to the FCPA's criminal penalties for violations of the accounting provisions if they acted "willfully."[264]

For example, a French company was criminally charged with failure to implement internal controls and failure to keep accurate books and records, among other violations.[265] As part of its deferred prosecution agreement, the company admitted to numerous internal control failures, including failure to implement sufficient anti-bribery compliance policies, maintain a sufficient system for the selection and approval of consultants, and conduct appropriate audits of payments to purported "business consultants."[266] Likewise, a German company pleaded guilty to internal controls and books and records violations where, from 2001 through 2007, it made payments totaling approximately $1.36 billion through various mechanisms, including $805.5 million as bribes and $554.5 million for unknown purposes.[267]

Individuals can be held criminally liable for accounting violations. For example, a former managing director of a U.S. bank's real estate business in China pleaded guilty to conspiring to evade internal accounting controls in order to transfer a multi-million dollar ownership interest in a Shanghai building to himself and a Chinese public official with whom he had a personal friendship. The former managing director repeatedly made false representations to his employer about the transaction and the ownership interests involved. [268]

Conspiracy and Aiding and Abetting Liability

As with the FCPA's anti-bribery provisions, companies (including subsidiaries of issuers) and individuals may face criminal liability for conspiring to commit or for aiding and abetting violations of the accounting provisions.

For example, the subsidiary of a Houston-based company pleaded guilty both to conspiring to commit and to aiding and abetting the company's books and records and anti-bribery violations.[269] The subsidiary paid bribes of over $4 million and falsely characterized the payments as "commissions," "fees," or "legal services," consequently causing the company's books and records to be inaccurate. Although the subsidiary was not an issuer and therefore could not be charged directly with an accounting violation, it was criminally liable for its involvement in the parent company's accounting violation.

Similarly, a U.S. subsidiary of a Swiss freight forwarding company that was not an issuer was charged with conspiring to commit and with aiding and abetting the books and records violations of its customers, who were issuers and therefore subject to the FCPA's accounting provisions.[270] The U.S. subsidiary substantially assisted the issuer-customers in violating the FCPA's books and records provision by masking the true nature of the bribe payments in the invoices it submitted to the issuer-customers.[271] The subsidiary thus faced criminal liability for its involvement in the issuer-customers' FCPA violations even though it was not itself subject to the FCPA's accounting provisions.

Auditor Obligations

All public companies in the United States must file annual financial statements that have been prepared in conformity with U.S. Generally Accepted Accounting Principles (U.S. GAAP). These accounting principles are among the most comprehensive in the world. U.S. GAAP requires an accounting of all assets, liabilities, revenue, and expenses as well as extensive disclosures concerning the company's operations and financial condition. A company's financial statements should be complete and fairly represent the company's financial condition.[272] Thus, under U.S. GAAP, any payments to foreign government officials must be properly accounted for in a company's books, records, and financial statements.

U.S. laws, including SEC Rules, require issuers to undergo an annual external audit of their financial statements and to make those audited financial statements available to the public by filing them with SEC. SEC Rules and the rules and standards issued by the Public Company Accounting Oversight Board (PCAOB) under SEC oversight, require external auditors to be independent of the companies that they audit. Independent auditors must comply with the rules and standards set forth by the PCAOB when they perform an audit of a public company. These audit standards govern, for example, the auditor's responsibility concerning material errors, irregularities, or illegal acts by a client and its officers, directors, and employees. Additionally, the auditor has a responsibility to obtain an understanding of an entity's internal controls over financial reporting as part of its audit and must communicate all significant deficiencies and material weaknesses identified during the audit to management and the audit committee.[273]

Under Section 10A of the Exchange Act, independent auditors who discover an illegal act, such as the payment of bribes to domestic or foreign government officials, have certain obligations in connection with their audits of public companies. [274] Generally, Section 10A requires auditors who become aware of illegal acts to report such acts to appropriate levels within the company and, if the company fails to take appropriate action, to notify SEC.

chapter 3

The FCPA:
Accounting Provisions

OTHER RELATED U.S. LAWS

Businesses and individuals should be aware that conduct that violates the FCPA's anti-bribery or accounting provisions may also violate other statutes or regulations. Moreover, payments to foreign government officials and intermediaries may violate these laws even if all of the elements of an FCPA violation are not present.

Travel Act

The Travel Act, 18 U.S.C. § 1952, prohibits travel in interstate or foreign commerce or using the mail or any facility in interstate or foreign commerce, with the intent to distribute the proceeds of any unlawful activity or to promote, manage, establish, or carry on any unlawful activity.[275] "Unlawful activity" includes violations of not only the FCPA, but also state commercial bribery laws. Thus, bribery between private commercial enterprises may, in some circumstances, be covered by the Travel Act. Said differently, if a company pays kickbacks to an employee of a private company who is not a foreign official, such private-to-private bribery could possibly be charged under the Travel Act.

DOJ has previously charged both individual and corporate defendants in FCPA cases with violations of the Travel Act.[276] For instance, an individual investor was convicted of conspiracy to violate the FCPA and the Travel Act in 2009 where the relevant "unlawful activity" under the Travel Act was an FCPA violation involving a bribery scheme in Azerbaijan.[277] Also in 2009, a California company that engaged in both bribery of foreign officials in violation of the FCPA and commercial bribery in violation of California state law pleaded guilty to conspiracy to violate the FCPA and the Travel Act, among other charges.[278]

Money Laundering

Many FCPA cases also involve violations of anti-money laundering statutes.[279] For example, two Florida executives of a Miami-based telecommunications company were convicted of FCPA and money laundering conduct where they conducted financial transactions involving the proceeds of specified unlawful activities—violations of the FCPA, the criminal bribery laws of Haiti, and wire fraud—in order to conceal and disguise these proceeds. Notably, although foreign officials cannot be prosecuted for FCPA violations,[280] three former Haitian officials involved in the same scheme were convicted of money laundering.[281]

Mail and Wire Fraud

The mail and wire fraud statutes may also apply. In 2006, for example, a wholly owned foreign subsidiary of a U.S. issuer pleaded guilty to both FCPA and wire fraud counts where the scheme included overbilling the subsidiary's customers—both government and private—and using part of the overcharged money to pay kickbacks to the customers' employees. The wire fraud charges alleged that the subsidiary had funds wired from its parent's Oregon bank account to off-the-books bank accounts in South Korea that were controlled by the subsidiary. The funds, amounting to almost $2 million, were then paid to managers of state-owned and private steel production companies in China and South Korea as illegal commission payments and kickbacks that were disguised as refunds, commissions, and other seemingly legitimate expenses.[282]

Certification and Reporting Violations

Certain other licensing, certification, and reporting requirements imposed by the U.S. government can also be implicated in the foreign bribery context. For example, as a condition of its facilitation of direct loans and loan guarantees to a foreign purchaser of U.S. goods and services, the Export-Import Bank of the United States requires the U.S. supplier to make certifications concerning commissions, fees, or other payments paid in connection with the financial assistance and that it has not and will not violate the FCPA.[283] A false certification may give rise to criminal liability for false statements.[284]

Similarly, manufacturers, exporters, and brokers of certain defense articles and services are subject to registration, licensing, and reporting requirements under the Arms Export Control Act (AECA), 22 U.S.C. § 2751, *et seq.*, and its implementing regulations, the International Traffic in Arms Regulations (ITAR), 22 C.F.R. § 120, *et seq*. For example, under AECA and ITAR, all manufacturers and exporters of defense articles and services must register with the Directorate of Defense Trade Controls. The sale of defense articles and services valued at $500,000 or more triggers disclosure requirements concerning fees and commissions, including bribes, in an aggregate amount of $100,000 or more.[285] Violations of AECA and ITAR can result in civil and criminal penalties.[286]

Tax Violations

Individuals and companies who violate the FCPA may also violate U.S. tax law, which explicitly prohibits tax deductions for bribes, such as false sales "commissions" deductions intended to conceal corrupt payments.[287] Internal Revenue Service-Criminal Investigation has been involved in a number of FCPA investigations involving tax violations, as well as other financial crimes like money laundering.

chapter 4

Other Related U.S. Laws

GUIDING PRINCIPLES OF ENFORCEMENT

What Does DOJ Consider When Deciding Whether to Open an Investigation or Bring Charges?

Whether and how DOJ will commence, decline, or otherwise resolve an FCPA matter is guided by the *Principles of Federal Prosecution* in the case of individuals, and the *Principles of Federal Prosecution of Business Organizations* in the case of companies.

DOJ *Principles of Federal Prosecution*

The *Principles of Federal Prosecution*, set forth in Chapter 9-27.000 of the U.S. Attorney's Manual,[288] provide guidance for DOJ prosecutors regarding initiating or declining prosecution, selecting charges, and plea-bargaining. The *Principles of Federal Prosecution* provide that prosecutors should recommend or commence federal prosecution if the putative defendant's conduct constitutes a federal offense and the admissible evidence will probably be sufficient to obtain and sustain a conviction unless (1) no substantial federal interest would be served by prosecution; (2) the person is subject to effective prosecution in another jurisdiction; or (3) an adequate non-criminal alternative to prosecution exists. In assessing the existence of a substantial federal interest, the prosecutor is advised to "weigh all relevant considerations," including the nature and seriousness of the offense; the deterrent effect of prosecution; the person's culpability in connection with the offense; the person's history with respect to criminal activity; the person's willingness to cooperate in the investigation or prosecution of others; and the probable sentence or other consequences if the person is convicted. The *Principles of Federal Prosecution* also set out the considerations to be weighed when deciding whether to enter into a plea agreement with an individual defendant, including the nature and seriousness of the offense and the person's willingness to cooperate, as well as the desirability of prompt and certain disposition of the case and the expense of trial and appeal.[289]

DOJ *Principles of Federal Prosecution of Business Organizations*

The *Principles of Federal Prosecution of Business Organizations*, set forth in Chapter 9-28.000 of the U.S. Attorney's Manual,[290] provide guidance regarding the resolution of cases involving corporate wrongdoing. The *Principles of Federal Prosecution of Business Organizations* recognize that resolution of corporate criminal cases by means other than indictment, including non-prosecution and deferred prosecution agreements, may be appropriate in certain circumstances. Nine factors are considered in conducting an investigation, determining whether to charge a corporation, and negotiating plea or other agreements:

- the nature and seriousness of the offense, including the risk of harm to the public;
- the pervasiveness of wrongdoing within the corporation, including the complicity in, or the condoning of, the wrongdoing by corporate management;
- the corporation's history of similar misconduct, including prior criminal, civil, and regulatory enforcement actions against it;
- the corporation's timely and voluntary disclosure of wrongdoing and its willingness to cooperate in the investigation of its agents;
- the existence and effectiveness of the corporation's pre-existing compliance program;
- the corporation's remedial actions, including any efforts to implement an effective corporate compliance program or improve an existing one, replace responsible management, discipline or terminate wrongdoers, pay restitution, and cooperate with the relevant government agencies;
- collateral consequences, including whether there is disproportionate harm to shareholders, pension holders, employees, and others not proven personally culpable, as well as impact on the public arising from the prosecution;
- the adequacy of the prosecution of individuals responsible for the corporation's malfeasance; and
- the adequacy of remedies such as civil or regulatory enforcement actions.

As these factors illustrate, in many investigations it will be appropriate for a prosecutor to consider a corporation's pre-indictment conduct, including voluntary disclosure, cooperation, and remediation, in determining whether to seek an indictment. In assessing a corporation's cooperation, prosecutors are prohibited from requesting attorney-client privileged materials with two exceptions—when a corporation or its employee asserts an advice-of-counsel defense and when the attorney-client communications were in furtherance of a crime or fraud. Otherwise, an organization's cooperation may only be assessed on the basis of whether it disclosed the *relevant facts* underlying an investigation—and not on the basis of whether it has waived its attorney-client privilege or work product protection.[291]

What Does SEC Consider When Deciding Whether to Open an Investigation or Bring Charges?

SEC's *Enforcement Manual*, published by SEC's Enforcement Division and available on SEC's website,[292] sets forth information about how SEC conducts investigations, as well as the guiding principles that SEC staff considers when determining whether to open or close an investigation and whether civil charges are merited. There are various ways that potential FCPA violations come to the attention of SEC staff, including: tips from informants or whistleblowers; information developed in other investigations; self-reports or public disclosures by companies; referrals from other offices or agencies; public sources, such as media reports and trade publications; and proactive investigative techniques, including risk-based initiatives. Investigations can be formal, such as where SEC has issued a formal order of investigation that authorizes its staff to issue investigative subpoenas for testimony and documents, or informal, such as where the staff proceeds with the investigation without the use of investigative subpoenas.

In determining whether to open an investigation and, if so, whether an enforcement action is warranted, SEC staff considers a number of factors, including: the statutes or rules potentially violated; the egregiousness of the potential violation; the potential magnitude of the violation; whether the potentially harmed group is particularly vulnerable or at risk; whether the conduct is ongoing; whether the conduct can be investigated efficiently and within the statute of limitations period; and whether other authorities, including federal or state agencies or regulators, might be better suited to investigate the conduct. SEC staff also may consider whether the case involves a possibly widespread industry practice that should be addressed, whether the case involves a recidivist, and whether the matter gives SEC an opportunity to be visible in a community that might not otherwise be familiar with SEC or the protections afforded by the securities laws.

For more information about the Enforcement Division's procedures concerning investigations, enforcement actions, and cooperation with other regulators, see the *Enforcement Manual* at http://www.sec.gov/divisions/enforce.shtml.

Self-Reporting, Cooperation, and Remedial Efforts

While the conduct underlying any FCPA investigation is obviously a fundamental and threshold consideration in deciding what, if any, action to take, both DOJ and SEC place a high premium on self-reporting, along with cooperation and remedial efforts, in determining the appropriate resolution of FCPA matters.

Criminal Cases

Under DOJ's *Principles of Federal Prosecution of Business Organizations*, federal prosecutors consider a company's cooperation in determining how to resolve a corporate criminal case. Specifically, prosecutors consider whether the company made a voluntary and timely disclosure as well as the company's willingness to provide relevant information and evidence and identify relevant actors inside and outside the company, including senior executives. In addition, prosecutors may consider a company's remedial actions, including efforts to improve an existing compliance program or appropriate disciplining of wrongdoers.[293] A company's remedial measures should be meaningful and illustrate its recognition of the seriousness of the misconduct, for example, by taking steps to implement the personnel, operational, and organizational changes necessary to establish an awareness among employees that criminal conduct will not be tolerated.[294]

The *Principles of Federal Prosecution* similarly provide that prosecutors may consider an individual's willingness to cooperate in deciding whether a prosecution should be undertaken and how it should be resolved. Although a willingness to cooperate will not, by itself, generally relieve a person of criminal liability, it may be given "serious consideration" in evaluating whether to enter into a plea agreement with a defendant, depending on the nature and value of the cooperation offered.[295]

The U.S. Sentencing Guidelines similarly take into account an individual defendant's cooperation and voluntary disclosure. Under § 5K1.1, a defendant's cooperation, if sufficiently substantial, may justify the government filing a motion for a reduced sentence. And under § 5K2.16, a defendant's voluntary disclosure of an offense prior to its discovery—if the offense was unlikely to have been discovered otherwise—may warrant a downward departure in certain circumstances.

Chapter 8 of the Sentencing Guidelines, which governs the sentencing of organizations, takes into account an organization's remediation as part of an "effective compliance and ethics program." One of the seven elements of such a program provides that after the detection of criminal conduct, "the organization shall take reasonable steps to respond appropriately to the criminal conduct and to prevent further similar criminal conduct, including making any necessary modifications to the organization's compliance and ethics program."[296] Having an effective compliance and ethics program may lead to a three-point reduction in an organization's culpability score under § 8C2.5, which affects the fine calculation under the Guidelines. Similarly, an organization's self-reporting, cooperation, and acceptance of responsibility may lead to fine reductions under § 8C2.5(g) by decreasing the culpability score. Conversely, an organization will not qualify for the compliance program reduction when it unreasonably delayed reporting the offense.[297] Similar to § 5K1.1

for individuals, organizations can qualify for departures pursuant to § 8C4.1 of the Guidelines for cooperating in the prosecution of others.

Civil Cases

SEC's Framework for Evaluating Cooperation by Companies

SEC's framework for evaluating cooperation by companies is set forth in its 2001 *Report of Investigation Pursuant to Section 21(a) of the Securities Exchange Act of 1934 and Commission Statement on the Relationship of Cooperation to Agency Enforcement Decisions,* which is commonly known as the *Seaboard Report*.[298] The report, which explained the Commission's decision not to take enforcement action against a public company for certain accounting violations caused by its subsidiary, details the many factors SEC considers in determining whether, and to what extent, it grants leniency to companies for cooperating in its investigations and for related good corporate citizenship. Specifically, the report identifies four broad measures of a company's cooperation:

- self-policing prior to the discovery of the misconduct, including establishing effective compliance procedures and an appropriate tone at the top;
- self-reporting of misconduct when it is discovered, including conducting a thorough review of the nature, extent, origins, and consequences of the misconduct, and promptly, completely, and effectively disclosing the misconduct to the public, to regulatory agencies, and to self-regulatory organizations;
- remediation, including dismissing or appropriately disciplining wrongdoers, modifying and improving internal controls and procedures to prevent recurrence of the misconduct, and appropriately compensating those adversely affected; and
- cooperation with law enforcement authorities, including providing SEC staff with all information relevant to the underlying violations and the company's remedial efforts.

Since every enforcement matter is different, this analytical framework sets forth general principles but does not limit SEC's broad discretion to evaluate every case individually on its own unique facts and circumstances. Similar to SEC's treatment of cooperating individuals, credit for cooperation by companies may range from taking no enforcement action to pursuing reduced sanctions in connection with enforcement actions.

SEC's Framework for Evaluating Cooperation by Individuals

In 2010, SEC announced a new cooperation program for individuals.[299] SEC staff has a wide range of tools to facilitate and reward cooperation by individuals, from taking no enforcement action to pursuing reduced sanctions in connection with enforcement actions. Although the evaluation of cooperation depends on the specific circumstances, SEC generally evaluates four factors to determine whether, to what extent, and in what manner to credit cooperation by individuals:

- the assistance provided by the cooperating individual in SEC's investigation or related enforcement actions, including, among other things: the value and timeliness of the cooperation, including whether the individual was the first to report the misconduct to SEC or to offer his or her cooperation; whether the investigation was initiated based upon the information or other cooperation by the individual; the quality of the cooperation, including whether the individual was truthful and the cooperation was complete; the time and resources conserved as a result of the individual's cooperation; and the nature of the cooperation, such as the type of assistance provided;
- the importance of the matter in which the individual provided cooperation;
- the societal interest in ensuring that the cooperating individual is held accountable for his or her misconduct, including the severity of the individual's misconduct, the culpability of the individual, and the efforts undertaken by the individual to remediate the harm; and

- the appropriateness of a cooperation credit in light of the profile of the cooperating individual.

Corporate Compliance Program

In a global marketplace, an effective compliance program is a critical component of a company's internal controls and is essential to detecting and preventing FCPA violations.[300] Effective compliance programs are tailored to the company's specific business and to the risks associated with that business. They are dynamic and evolve as the business and the markets change.

An effective compliance program promotes "an organizational culture that encourages ethical conduct and a commitment to compliance with the law."[301] Such a program protects a company's reputation, ensures investor value and confidence, reduces uncertainty in business transactions, and secures a company's assets.[302] A well-constructed, thoughtfully implemented, and consistently enforced compliance and ethics program helps prevent, detect, remediate, and report misconduct, including FCPA violations.

In addition to considering whether a company has self-reported, cooperated, and taken appropriate remedial actions, DOJ and SEC also consider the adequacy of a company's compliance program when deciding what, if any, action to take. The program may influence whether or not charges should be resolved through a deferred prosecution agreement (DPA) or non-prosecution agreement (NPA), as well as the appropriate length of any DPA or NPA, or the term of corporate probation. It will often affect the penalty amount and the need for a monitor or self-reporting.[303] As discussed above, SEC's *Seaboard Report* focuses, among other things, on a company's self-policing prior to the discovery of the misconduct, including whether it had established effective compliance procedures.[304] Likewise, three of the nine factors set forth in DOJ's *Principles of Federal Prosecution of Business Organizations* relate, either directly or indirectly, to a compliance program's design and implementation, including the pervasiveness of wrongdoing within the company, the existence and effectiveness of the company's pre-existing compliance program, and the company's remedial actions.[305] DOJ also considers the U.S. Sentencing Guidelines' elements of an effective compliance program, as set forth in § 8B2.1 of the Guidelines.

These considerations reflect the recognition that a company's failure to prevent every single violation does not necessarily mean that a particular company's compliance program was not generally effective. DOJ and SEC understand that "no compliance program can ever prevent all criminal activity by a corporation's employees,"[306] and they do not hold companies to a standard of perfection. An assessment of a company's compliance program, including its design and good faith implementation and enforcement, is an important part of the government's assessment of whether a violation occurred, and if so, what action should be taken. In appropriate circumstances, DOJ and SEC may decline to pursue charges against a company based on the company's effective compliance program, or may otherwise seek to reward a company for its program, even when that program did not prevent the particular underlying FCPA violation that gave rise to the investigation.[307]

DOJ and SEC have no formulaic requirements regarding compliance programs. Rather, they employ a common-sense and pragmatic approach to evaluating compliance programs, making inquiries related to three basic questions:

- Is the company's compliance program well designed?
- Is it being applied in good faith?
- Does it work?[308]

This guide contains information regarding some of the basic elements DOJ and SEC consider when evaluating compliance programs. Although the focus is on compliance with the FCPA, given the existence of anti-corruption laws in many other countries, businesses should consider designing programs focused on anti-corruption compliance more broadly.[309]

Hallmarks of Effective Compliance Programs

Individual companies may have different compliance needs depending on their size and the particular risks associated with their businesses, among other factors. When it comes to compliance, there is no one-size-fits-all program. Thus, the discussion below is meant to provide insight into the aspects of compliance programs that DOJ and SEC assess, recognizing that companies may consider a variety of factors when making their own determination of what is appropriate for their specific business needs.[310] Indeed, small- and medium-size enterprises likely will have different compliance programs from large multi-national corporations, a fact DOJ and SEC take into account when evaluating companies' compliance programs.

Compliance programs that employ a "check-the-box" approach may be inefficient and, more importantly, ineffective. Because each compliance program should be tailored to an organization's specific needs, risks, and challenges, the information provided below should not be considered a substitute for a company's own assessment of the corporate compliance program most appropriate for that particular business organization. In the end, if designed carefully, implemented earnestly, and enforced fairly, a company's compliance program—no matter how large or small the organization—will allow the company generally to prevent violations, detect those that do occur, and remediate them promptly and appropriately.

Commitment from Senior Management and a Clearly Articulated Policy Against Corruption

Within a business organization, compliance begins with the board of directors and senior executives setting the proper tone for the rest of the company. Managers and employees take their cues from these corporate leaders. Thus, DOJ and SEC consider the commitment of corporate leaders to a "culture of compliance"[311] and look to see if this high-level commitment is also reinforced and implemented by middle managers and employees at all levels of a business. A well-designed compliance program that is not enforced in good faith, such as when corporate management explicitly or implicitly encourages employees to engage in misconduct to achieve business objectives, will be ineffective. DOJ and SEC have often encountered companies with compliance programs that are strong on paper but that nevertheless have significant FCPA violations because management has failed to effectively implement the program even in the face of obvious signs of corruption. This may be the result of aggressive sales staff preventing compliance personnel from doing their jobs effectively and of senior management, more concerned with securing a valuable business opportunity than enforcing a culture of compliance, siding with the sales team. The higher the financial stakes of the transaction, the greater the temptation for management to choose profit over compliance.

A strong ethical culture directly supports a strong compliance program. By adhering to ethical standards, senior managers will inspire middle managers to reinforce those standards. Compliant middle managers, in turn, will encourage employees to strive to attain those standards throughout the organizational structure.[312]

In short, compliance with the FCPA and ethical rules must start at the top. DOJ and SEC thus evaluate whether senior management has clearly articulated company standards, communicated them in unambiguous terms, adhered to them scrupulously, and disseminated them throughout the organization.

Code of Conduct and Compliance Policies and Procedures

A company's code of conduct is often the foundation upon which an effective compliance program is built. As DOJ has repeatedly noted in its charging documents, the most effective codes are clear, concise, and accessible to all employees and to those conducting business on the company's behalf. Indeed, it would be difficult to effectively implement a compliance program if it was not available in the local language so that employees in foreign subsidiaries can access and understand it. When assessing a compliance program, DOJ and SEC will review whether the company has taken steps to make certain that the code of conduct remains current and effective and whether a company has periodically reviewed and updated its code.

Whether a company has policies and procedures that outline responsibilities for compliance within the company, detail proper internal controls, auditing practices, and documentation policies, and set forth disciplinary procedures will also be considered by DOJ and SEC. These types of policies and procedures will depend on the size and nature of the business and the risks associated with the business. Effective policies and procedures require an in-depth understanding of the company's business model, including its products and services, third-party agents, customers, government interactions, and industry and geographic risks. Among the risks that a company may need to address include the nature and extent of transactions with foreign governments, including payments to foreign officials; use of third parties; gifts, travel, and entertainment expenses; charitable and political donations; and facilitating and expediting payments. For example, some companies with global operations have created web-based approval processes to review and approve routine gifts, travel, and entertainment involving foreign officials and private customers with clear monetary limits and annual limitations. Many of these systems have built-in flexibility so that senior management, or in-house legal counsel, can be apprised of and, in appropriate circumstances, approve unique requests. These types of systems can be a good way to conserve corporate resources while, if properly implemented, preventing and detecting potential FCPA violations.

Regardless of the specific policies and procedures implemented, these standards should apply to personnel at all levels of the company.

Oversight, Autonomy, and Resources

In appraising a compliance program, DOJ and SEC also consider whether a company has assigned responsibility for the oversight and implementation of a company's compliance program to one or more specific senior executives within an organization.[313] Those individuals must have appropriate authority within the organization, adequate autonomy from management, and sufficient resources to ensure that the company's compliance program is implemented effectively.[314] Adequate autonomy generally includes direct access to an organization's governing authority, such as the board of directors and committees of the board of directors (e.g., the audit committee).[315] Depending on the size and structure of an organization, it may be appropriate for day-to-day operational responsibility to be delegated to other specific individuals within a company.[316] DOJ and SEC recognize that the reporting structure will depend on the size and complexity of an organization. Moreover, the amount of resources devoted to compliance will depend on the company's size, complexity, industry, geographical reach, and risks associated with the business. In assessing whether a company has reasonable internal controls, DOJ and SEC typically consider whether the company devoted adequate staffing and resources to the compliance program given the size, structure, and risk profile of the business.

Risk Assessment

Assessment of risk is fundamental to developing a strong compliance program, and is another factor DOJ and SEC evaluate when assessing a company's compliance program.[317] One-size-fits-all compliance programs are generally ill-conceived and ineffective because resources inevitably are spread too thin, with too much focus on low-risk markets and transactions to the detriment of high-risk areas. Devoting a disproportionate amount of time policing modest entertainment and gift-giving instead of focusing on large government bids, questionable payments to third-party consultants, or excessive discounts to resellers and distributors may indicate that a company's compliance program is ineffective. A $50 million contract with a government agency in a high-risk country warrants greater scrutiny than modest and routine gifts and entertainment. Similarly, performing identical due diligence on all third-party agents, irrespective of risk factors, is often counterproductive, diverting attention and resources away from those third parties that pose the most significant risks. DOJ and SEC will give meaningful credit to a company that implements in good faith a comprehensive, risk-based compliance program, even if that program does not prevent an infraction in a low risk area because greater attention and resources had been devoted to a higher risk area. Conversely, a company that fails to prevent an FCPA violation on an economically significant, high-risk transaction because it failed to perform a level of due diligence commensurate with the size and risk of the transaction is likely to receive reduced credit based on the quality and effectiveness of its compliance program.

As a company's risk for FCPA violations increases, that business should consider increasing its compliance procedures, including due diligence and periodic internal audits. The degree of appropriate due diligence is fact-specific and should vary based on industry, country, size, and nature of the transaction, and the method and amount of third-party compensation. Factors to consider, for instance, include risks presented by: the country and industry sector, the business opportunity, potential business partners, level of involvement with governments, amount of government regulation and oversight, and exposure to customs and immigration in conducting business affairs. When assessing a company's compliance program, DOJ and SEC take into account whether and to what degree a company analyzes and addresses the particular risks it faces.

Training and Continuing Advice

Compliance policies cannot work unless effectively communicated throughout a company. Accordingly, DOJ and SEC will evaluate whether a company has taken steps to ensure that relevant policies and procedures have been communicated throughout the organization, including through periodic training and certification for all directors, officers, relevant employees, and, where appropriate, agents and business partners.[318] For example, many larger companies have implemented a mix of web-based and in-person training conducted at varying intervals. Such training typically covers company policies and procedures, instruction on applicable laws, practical advice to address real-life scenarios, and case studies. Regardless of how a company chooses to conduct its training, however, the information should be presented in a manner appropriate for the targeted audience, including providing training and training materials in the local language. For example, companies may want to consider providing different types of training to their sales personnel and accounting personnel with hypotheticals or sample situations that are similar to the situations they might encounter. In addition to the existence and scope of a company's training program, a company should develop appropriate measures, depending on the size and sophistication of the particular company, to provide guidance and advice on complying with the company's ethics and compliance program, including when such advice is needed urgently. Such measures will help ensure that the compliance program is understood and followed appropriately at all levels of the company.

Incentives and Disciplinary Measures

In addition to evaluating the design and implementation of a compliance program throughout an organization, enforcement of that program is fundamental to its effectiveness.[319] A compliance program should apply from the board room to the supply room—no one should be beyond its reach. DOJ and SEC will thus consider whether, when enforcing a compliance program, a company has appropriate and clear disciplinary procedures, whether those procedures are applied reliably and promptly, and whether they are commensurate with the violation. Many companies have found that publicizing disciplinary actions internally, where appropriate under local law, can have an important deterrent effect, demonstrating that unethical and unlawful actions have swift and sure consequences.

DOJ and SEC recognize that positive incentives can also drive compliant behavior. These incentives can take many forms such as personnel evaluations and promotions, rewards for improving and developing a company's compliance program, and rewards for ethics and compliance leadership.[320] Some organizations, for example, have made adherence to compliance a significant metric for management's bonuses so that compliance becomes an integral part of management's everyday concern. Beyond financial incentives, some companies have highlighted compliance within their organizations by recognizing compliance professionals and internal audit staff. Others have made working in the company's compliance organization a way to advance an employee's career. SEC, for instance, has encouraged companies to embrace methods to incentivize ethical and lawful behavior:

> [M]ake integrity, ethics and compliance part of the promotion, compensation and evaluation processes as well. For at the end of the day, the most effective way to communicate that "doing the right thing" is a priority, is to reward it. Conversely, if employees are led to believe that, when it comes to compensation and career advancement, all that counts is short-term profitability, and that cutting ethical corners is an acceptable way of getting there, they'll perform to that measure. To cite an example from a different walk of life: a college football coach can be told that the graduation rates of his players are what matters, but he'll know differently if the sole focus of his contract extension talks or the decision to fire him is his win-loss record. [321]

No matter what the disciplinary scheme or potential incentives a company decides to adopt, DOJ and SEC will consider whether they are fairly and consistently applied across the organization. No executive should be above compliance, no employee below compliance, and no person within an organization deemed too valuable to be disciplined, if warranted. Rewarding good behavior and sanctioning bad behavior reinforces a culture of compliance and ethics throughout an organization.

Third-Party Due Diligence and Payments

DOJ's and SEC's FCPA enforcement actions demonstrate that third parties, including agents, consultants, and distributors, are commonly used to conceal the payment of bribes to foreign officials in international business transactions. Risk-based due diligence is particularly important with third parties and will also be considered by DOJ and SEC in assessing the effectiveness of a company's compliance program.

Although the degree of appropriate due diligence may vary based on industry, country, size and nature of the transaction, and historical relationship with the third-party, some guiding principles always apply.

First, as part of risk-based due diligence, companies should understand the qualifications and associations of its third-party partners, including its business reputation, and relationship, if any, with foreign officials. The degree of scrutiny should increase as red flags surface.

Second, companies should have an understanding of the business rationale for including the third party in the transaction. Among other things, the company should understand the role of and need for the third party and ensure that the contract terms specifically describe the services to be performed. Additional considerations include payment terms and how those payment terms compare to typical terms in that industry and country, as well as the timing of the third party's introduction to the business. Moreover, companies may want to confirm and document that the third party is actually performing the work for which it is being paid and that its compensation is commensurate with the work being provided.

Third, companies should undertake some form of ongoing monitoring of third-party relationships.[322] Where appropriate, this may include updating due diligence periodically, exercising audit rights, providing periodic training, and requesting annual compliance certifications by the third party.

In addition to considering a company's due diligence on third parties, DOJ and SEC also assess whether the company has informed third parties of the company's

Compliance Program Case Study

Recent DOJ and SEC actions relating to a financial institution's real estate transactions with a government agency in China illustrate the benefits of implementing and enforcing a comprehensive risk-based compliance program. The case involved a joint venture real estate investment in the Luwan District of Shanghai, China, between a U.S.-based financial institution and a state-owned entity that functioned as the District's real estate arm. The government entity conducted the transactions through two special purpose vehicles ("SPVs"), with the second SPV purchasing a 12% stake in a real estate project.

The financial institution, through a robust compliance program, frequently trained its employees, imposed a comprehensive payment-approval process designed to prevent bribery, and staffed a compliance department with a direct reporting line to the board of directors. As appropriate given the industry, market, and size and structure of the transactions, the financial institution (1) provided extensive FCPA training to the senior executive responsible for the transactions and (2) conducted extensive due diligence on the transactions, the local government entity, and the SPVs. Due diligence on the entity included reviewing Chinese government records; speaking with sources familiar with the Shanghai real estate market; checking the government entity's payment records and credit references; conducting an on-site visit and placing a pretextual telephone call to the entity's offices; searching media sources; and conducting background checks on the entity's principals. The financial institution vetted the SPVs by obtaining a letter with designated bank account information from a Chinese official associated with the government entity (the "Chinese Official"); using an international law firm to request and review 50 documents from the SPVs' Canadian attorney; interviewing the attorney; and interviewing the SPVs' management.

Notwithstanding the financial institution's robust compliance program and good faith enforcement of it, the company failed to learn that the Chinese Official personally owned nearly 50% of the second SPV (and therefore a nearly 6% stake in the joint venture) and that the SPV was used as a vehicle for corrupt payments. This failure was due, in large part, to misrepresentations by the Chinese Official, the financial institution's executive in charge of the project, and the SPV's attorney that the SPV was 100% owned and controlled by the government entity. DOJ and SEC declined to take enforcement action against the financial institution, and its executive pleaded guilty to conspiracy to violate the FCPA's internal control provisions and also settled with SEC.

compliance program and commitment to ethical and lawful business practices and, where appropriate, whether it has sought assurances from third parties, through certifications and otherwise, of reciprocal commitments. These can be meaningful ways to mitigate third-party risk.

Confidential Reporting and Internal Investigation

An effective compliance program should include a mechanism for an organization's employees and others to report suspected or actual misconduct or violations of the company's policies on a confidential basis and without fear of retaliation.[323] Companies may employ, for example, anonymous hotlines or ombudsmen. Moreover, once an allegation is made, companies should have in place an efficient, reliable, and properly funded process for investigating the allegation and documenting the company's response, including any disciplinary or remediation measures taken. Companies will want to consider taking "lessons learned" from any reported violations and the outcome of any resulting investigation to update their internal controls and compliance program and focus future training on such issues, as appropriate.

Continuous Improvement: Periodic Testing and Review

Finally, a good compliance program should constantly evolve. A company's business changes over time, as do the environments in which it operates, the nature of its customers, the laws that govern its actions, and the standards of its industry. In addition, compliance programs that do not just exist on paper but are followed in practice will inevitably uncover compliance weaknesses and require enhancements. Consequently, DOJ and SEC evaluate whether companies regularly review and improve their compliance programs and not allow them to become stale.

According to one survey, 64% of general counsel whose companies are subject to the FCPA say there is room for improvement in their FCPA training and compliance programs.[324] An organization should take the time to review and test its controls, and it should think critically about its potential weaknesses and risk areas. For example, some companies have undertaken employee surveys to measure their compliance culture and strength of internal controls, identify best practices, and detect new risk areas. Other companies periodically test their internal controls with targeted audits to make certain that controls on paper are working in practice. DOJ and SEC will give meaningful credit to thoughtful efforts to create a sustainable compliance program if a problem is later discovered. Similarly, undertaking proactive evaluations before a problem strikes can lower the applicable penalty range under the U.S. Sentencing Guidelines.[325] Although the nature and the frequency of proactive evaluations may vary depending on the size and complexity of an organization, the idea behind such efforts is the same: continuous improvement and sustainability.[326]

Mergers and Acquisitions: Pre-Acquisition Due Diligence and Post-Acquisition Integration

In the context of the FCPA, mergers and acquisitions present both risks and opportunities. A company that does not perform adequate FCPA due diligence prior to a merger or acquisition may face both legal and business risks.[327] Perhaps most commonly, inadequate due diligence can allow a course of bribery to continue—with all the attendant harms to a business's profitability and reputation, as well as potential civil and criminal liability.

In contrast, companies that conduct effective FCPA due diligence on their acquisition targets are able to evaluate more accurately each target's value and negotiate for the costs of the bribery to be borne by the target. In addition, such actions demonstrate to DOJ and SEC a company's commitment to compliance and are taken into account when evaluating any potential enforcement action. For example, DOJ and SEC declined to take enforcement action against an acquiring issuer when the issuer, among other things, uncovered the corruption at the company being acquired as part of due diligence, ensured that the corruption was voluntarily disclosed to the government, cooperated with the investigation, and incorporated the acquired company into its compliance program and internal controls. On the other hand, SEC took action against the acquired company, and DOJ took action against a subsidiary of the acquired company.[328] When pre-acquisition due diligence is not possible, DOJ has described procedures, contained in Opinion Procedure Release No. 08-02, pursuant to which companies can nevertheless be rewarded if they choose to conduct thorough post-acquisition FCPA due diligence.[329]

FCPA due diligence, however, is normally only a portion of the compliance process for mergers and acquisitions. DOJ and SEC evaluate whether the acquiring company promptly incorporated the acquired company into all of its internal controls, including its compliance program. Companies should consider training new employees, reevaluating third parties under company standards, and, where appropriate, conducting audits on new business units.

For example, as a result of due diligence conducted by a California-based issuer before acquiring the majority interest in a joint venture, the issuer learned of corrupt payments to obtain business. However, the issuer only implemented its internal controls "halfway" so as not to "choke the sales engine and cause a distraction for the sales guys." As a result, the improper payments continued, and the issuer was held liable for violating the FCPA's internal controls and books and records provisions.[330]

Other Guidance on Compliance and International Best Practices

In addition to this guide, the U.S. Departments of Commerce and State have both issued publications that contain guidance regarding compliance programs. The Department of Commerce's International Trade Administration has published *Business Ethics: A Manual for Managing a Responsible Business Enterprise in Emerging Market Economies*,[331] and the Department of State has published *Fighting Global Corruption: Business Risk Management*.[332]

There is also an emerging international consensus on compliance best practices, and a number of inter-governmental and non-governmental organizations have issued guidance regarding best practices for compliance.[333] Most notably, the OECD's 2009 Anti-Bribery Recommendation and its Annex II, *Good Practice Guidance on Internal Controls, Ethics, and Compliance*,[334] published in February 2010, were drafted based on consultations with the private sector and civil society and set forth specific good practices for ensuring effective compliance programs and measures for preventing and detecting foreign bribery. In addition, businesses may wish to refer to the following resources:

- Asia-Pacific Economic Cooperation—*Anti-Corruption Code of Conduct for Business*;[335]
- International Chamber of Commerce—*ICC Rules on Combating Corruption*;[336]
- Transparency International—*Business Principles for Countering Bribery*;[337]
- United Nations Global Compact—*The Ten Principles*;[338]
- World Bank—*Integrity Compliance Guidelines*;[339]and
- World Economic Forum—*Partnering Against Corruption–Principles for Countering Bribery*.[340]

Hypothetical: Third-Party Vetting

Part 1: Consultants

Company A, a U.S. issuer headquartered in Delaware, wants to start doing business in a country that poses high risks of corruption. Company A learns about a potential $50 million contract with the country's Ministry of Immigration. This is a very attractive opportunity to Company A, both for its profitability and to open the door to future projects with the government. At the suggestion of the company's senior vice president of international sales (Sales Executive), Company A hires a local businessman who assures them that he has strong ties to political and government leaders in the country and can help them win the contract. Company A enters into a consulting contract with the local businessman (Consultant). The agreement requires Consultant to use his best efforts to help the company win the business and provides for Consultant to receive a significant monthly retainer as well as a success fee of 3% of the value of any contract the company wins.

What steps should Company A consider taking before hiring Consultant?

There are several factors here that might lead Company A to perform heightened FCPA-related due diligence prior to retaining Consultant: (1) the market (high-risk country); (2) the size and significance of the deal to the company; (3) the company's first time use of this particular consultant; (4) the consultant's strong ties to political and government leaders; (5) the success fee structure of the contract; and (6) the vaguely-defined services to be provided. In order to minimize the likelihood of incurring FCPA liability, Company A should carefully vet Consultant and his role in the transaction, including close scrutiny of the relationship between Consultant and any Ministry of Immigration officials or other government officials. Although there is nothing inherently illegal about contracting with a third party that has close connections to politicians and government officials to perform legitimate services on a transaction, this type of relationship can be susceptible to corruption. Among other things, Company A may consider conducting due diligence on Consultant, including background

(cont'd)

and reference checks; ensuring that the contract spells out exactly what services and deliverables (such as written status reports or other documentation) Consultant is providing; training Consultant on the FCPA and other anti-corruption laws; requiring Consultant to represent that he will abide by the FCPA and other anti-corruption laws; including audit rights in the contract (and exercising those rights); and ensuring that payments requested by Consultant have the proper supporting documentation before they are approved for payment.

Part 2: Distributors and Local Partners

Assume the following alternative facts:

Instead of hiring Consultant, Company A retains an often-used local distributor (Distributor) to sell Company A's products to the Ministry of Immigration. In negotiating the pricing structure, Distributor, which had introduced the project to Company A, claims that the standard discount price to Distributor creates insufficient margin for Distributor to cover warehousing, distribution, installation, marketing, and training costs and requests an additional discount or rebate, or, in the alternative, a contribution to its marketing efforts, either in the form of a lump sum or as a percentage of the total contract. The requested discount/allowance is significantly larger than usual, although there is precedent at Company A for granting this level of discount in unique circumstances. Distributor further advises Company A that the Ministry's procurement officials responsible for awarding the contract have expressed a strong preference for including a particular local company (Local Partner) in the transaction as a subcontractor of Company A to perform installation, training, and other services that would normally have been performed by Distributor or Company A. According to Distributor, the Ministry has a solid working relationship with Local Partner, and it would cause less disruption for Local Partner to perform most of the on-site work at the Ministry. One of the principals (Principal 1) of the Local Partner is an official in another government ministry.

What additional compliance considerations do these alternative facts raise?

As with Consultant in the first scenario above, Company A should carefully vet Distributor and Local Partner and their roles in the transaction in order to minimize the likelihood of incurring FCPA liability. While Company A has an established relationship with Distributor, the fact that Distributor has requested an additional discount warrants further inquiry into the economic justification for the change, particularly where, as here, the proposed transaction structure contemplates paying Local Partner to provide many of the same services that Distributor would otherwise provide. In many cases, it may be appropriate for distributors to receive larger discounts to account for unique circumstances in particular transactions. That said, a common mechanism to create additional margin for bribe payments is through excessive discounts or rebates to distributors. Accordingly, when a company has pre-existing relationships with distributors and other third parties, transaction-specific due diligence—including an analysis of payment terms to confirm that the payment is commensurate with the work being performed—can be critical even in circumstances where due diligence of the distributor or other third party raises no initial red flags.

Company A should carefully scrutinize the relationship among Local Partner, Distributor, and Ministry of Immigration officials. While there is nothing inherently illegal about contracting with a third party that is recommended by the end-user, or even hiring a government official to perform legitimate services on a transaction unrelated to his or her government job, these facts raise additional red flags that warrant significant scrutiny. Among other things, Company A would be well-advised to require Principal 1 to verify that he will have no role in the Ministry of Immigration's decision to award the contract to Company A, notify the Ministry of Immigration and his own ministry of his proposed involvement in the transaction, and certify that he will abide by the FCPA and other anti-corruption laws and that his involvement in the transaction is permitted under local law.

(cont'd)

Assume the following additional facts:

Under its company policy for a government transaction of this size, Company A requires both finance and compliance approval. The finance officer is concerned that the discounts to Distributor are significantly larger than what they have approved for similar work and will cut too deeply into Company A's profit margin. The finance officer is also skeptical about including Local Partner to perform some of the same services that Company A is paying Distributor to perform. Unsatisfied with Sales Executive's explanation, she requests a meeting with Distributor and Principal 1. At the meeting, Distributor and Principal 1 offer vague and inconsistent justifications for the payments and fail to provide any supporting analysis, and Principal 1 seems to have no real expertise in the industry. During a coffee break, Distributor comments to Sales Executive that the finance officer is naïve about "how business is done in my country." Following the meeting, Sales Executive dismisses the finance officer's concerns, assuring her that the proposed transaction structure is reasonable and legitimate. Sales Executive also reminds the finance officer that "the deal is key to their growth in the industry."

The compliance officer focuses his due diligence on vetting Distributor and Local Partner and hires a business investigative firm to conduct a background check. Distributor appears reputable, capable, and financially stable and is willing to take on real risk in the project, financial and otherwise. However, the compliance officer learns that Distributor has established an off-shore bank account for the transaction. The compliance officer further learns that Local Partner's business was organized two years ago and appears financially stable but has no expertise in the industry and has established an off-shore shell company and bank account to conduct this transaction. The background check also reveals that Principal 1 is a former college roommate of a senior official of the Ministry of Immigration. The Sales Executive dismisses the compliance officer's concerns, commenting that what Local Partner does with its payments "isn't our problem." Sales Executive also strongly objects to the compliance officer's request to meet with Principal 1 to discuss the off-shore company and account, assuring him that it was done for legitimate tax purposes and complaining that if Company A continues to "harass" Local Partner and Distributor, they would partner with Company A's chief competitor. The compliance officer and the finance officer discuss their concerns with each other but ultimately sign off on the deal even though their questions had not been answered. Their decision is motivated in large part by their conversation with Sales Executive, who told them that this was the region's most important contract and that the detailed FCPA questionnaires and robust anti-corruption representations in the contracts placed the burden on Distributor and Local Partner to act ethically.

Company A goes forward with the Distributor and Local Partner agreements and wins the contract after six months. The finance officer approves Company A's payments to Local Partner via the offshore account, even though Local Partner's invoices did not contain supporting detail or documentation of any services provided. Company A recorded the payments as legitimate operational expenses on its books and records. Sales Executive received a large year-end bonus due to the award of the contract.

In fact, Local Partner and Distributor used part of the payments and discount margin, respectively, to funnel bribe payments to several Ministry of Immigration officials, including Principal 1's former college roommate, in exchange for awarding the contract to Company A. Thousands of dollars are also wired to the personal offshore bank account of Sales Executive.

How would DOJ and SEC evaluate the potential FCPA liability of Company A and its employees?

This is not the case of a single "rogue employee" circumventing an otherwise robust compliance program. Although Company A's finance and compliance officers had the correct instincts to scrutinize the structure and economics of the transaction and the role of the third parties, their due diligence was incomplete. When the initial inquiry identified significant red flags, they approved the transaction despite knowing that their concerns were unanswered or the answers they received raised additional concerns and red flags. Relying on due diligence questionnaires and anti-corruption representations is insufficient, particularly when the risks are readily apparent. Nor can Company A or its employees shield themselves from liability because it was Distributor and Local Partner—rather than Company A directly—that made the payments.

The facts suggest that Sales Executive had actual knowledge of or was willfully blind to the consultant's payment of the bribes. He also personally profited from the scheme (both from the kickback and from the bonus he received from the company) and intentionally discouraged the finance and compliance officers from learning the full story. Sales Executive is therefore subject to liability under the anti-bribery, books and records, and internal controls provisions of the FCPA, and others may be as well. Company A may also be liable for violations of the anti-bribery, books and records, and internal controls provisions of the FCPA given the number and significance of red flags that established a high probability of bribery and the role of employees and agents acting on the company's behalf.

chapter 5

Guiding Principles of Enforcement

FCPA PENALTIES, SANCTIONS, AND REMEDIES

What Are the Potential Consequences for Violations of the FCPA?

The FCPA provides for different criminal and civil penalties for companies and individuals.

Criminal Penalties

For each violation of the anti-bribery provisions, the FCPA provides that corporations and other business entities are subject to a fine of up to $2 million.[341] Individuals, including officers, directors, stockholders, and agents of companies, are subject to a fine of up to $100,000 and imprisonment for up to five years.[342]

For each violation of the accounting provisions, the FCPA provides that corporations and other business entities are subject to a fine of up to $25 million.[343] Individuals are subject to a fine of up to $5 million and imprisonment for up to 20 years.[344]

Under the Alternative Fines Act, 18 U.S.C. § 3571(d), courts may impose significantly higher fines than those provided by the FCPA—up to twice the benefit that the defendant sought to obtain by making the corrupt payment, as long as the facts supporting the increased fines are included in the indictment and either proved to the jury beyond a reasonable doubt or admitted in a guilty plea proceeding.[345] Fines imposed on individuals may not be paid by their employer or principal.[346]

U.S. Sentencing Guidelines

When calculating penalties for violations of the FCPA, DOJ focuses its analysis on the U.S. Sentencing Guidelines (Guidelines)[347] in all of its resolutions, including guilty pleas, DPAs, and NPAs. The Guidelines provide a very detailed and predictable structure for calculating penalties for all federal crimes, including violations of the FCPA. To determine the appropriate penalty, the "offense level" is first calculated by examining both the severity of the crime and facts specific to the crime, with appropriate reductions for cooperation and acceptance of responsibility, and, for business entities, additional factors such as voluntary disclosure, cooperation, preexisting compliance programs, and remediation.

The Guidelines provide for different penalties for the different provisions of the FCPA. The initial offense level for violations of the anti-bribery provisions is determined under § 2C1.1, while violations of the accounting provisions are assessed under § 2B1.1. For individuals, the initial offense level is modified by factors set forth in Chapters 3, 4, and 5 of the Guidelines[348] to identify a final offense level. This final offense level, combined with other factors, is used to determine whether the Guidelines would recommend that incarceration is appropriate, the length of any term of incarceration, and the appropriate amount of any fine. For corporations, the offense level is modified by factors particular to organizations as described in Chapter 8 to determine the applicable organizational penalty.

For example, violations of the anti-bribery provisions are calculated pursuant to § 2C1.1. The offense level is determined by first identifying the base offense level;[349] adding additional levels based on specific offense characteristics, including whether the offense involved more than one bribe, the value of the bribe or the benefit that was conferred, and the level of the public official;[350] adjusting the offense level based on the defendant's role in the offense;[351] and using the total offense level as well as the defendant's criminal history category to determine the advisory guideline range.[352] For violations of the accounting provisions assessed under § 2B1.1, the procedure is generally the same, except that the specific offense characteristics differ. For instance, for violations of the FCPA's accounting provisions, the offense level may be increased if a substantial part of the scheme occurred outside the United States or if the defendant was an officer or director of a publicly traded company at the time of the offense.[353]

For companies, the offense level is calculated pursuant to §§ 2C1.1 or 2B1.1 in the same way as for an individual—by starting with the base offense level and increasing it as warranted by any applicable specific offense characteristics. The organizational guidelines found in Chapter 8, however, provide the structure for determining the final advisory guideline fine range for organizations. The base fine consists of the greater of the amount corresponding to the total offense level, calculated pursuant to the Guidelines, or the pecuniary gain or loss from the offense.[354] This base fine is then multiplied by a culpability score that can either reduce the fine to as little as five percent of the base fine or increase the recommended fine to up to four times the amount of the base fine.[355] As described in § 8C2.5, this culpability score is calculated by taking into account numerous factors such as the size of the organization committing the criminal acts; the involvement in or tolerance of criminal activity by high-level personnel within the organization; and prior misconduct or obstructive behavior. The culpability score is reduced if the organization had an effective preexisting compliance program to prevent violations and if the organization voluntarily disclosed the offense, cooperated in the investigation, and accepted responsibility for the criminal conduct.[356]

Civil Penalties

Although only DOJ has the authority to pursue criminal actions, both DOJ and SEC have civil enforcement authority under the FCPA. DOJ may pursue civil actions for anti-bribery violations by domestic concerns (and their officers, directors, employees, agents, or stockholders) and foreign nationals and companies for violations while in the United States, while SEC may pursue civil actions against issuers and their officers, directors, employees, agents, or stockholders for violations of the anti-bribery and the accounting provisions.[357]

For violations of the anti-bribery provisions, corporations and other business entities are subject to a civil penalty of up to $16,000 per violation.[358] Individuals, including officers, directors, stockholders, and agents of companies, are similarly subject to a civil penalty of up to $16,000 per violation,[359] which may not be paid by their employer or principal.[360]

For violations of the accounting provisions, SEC may obtain a civil penalty not to exceed the greater of (a) the gross amount of the pecuniary gain to the defendant as a result of the violations or (b) a specified dollar limitation. The specified dollar limitations are based on the egregiousness of the violation, ranging from $7,500 to $150,000 for an individual and $75,000 to $725,000 for a company.[361] SEC may obtain civil penalties both in actions filed in federal court and in administrative proceedings.[362]

Collateral Consequences

In addition to the criminal and civil penalties described above, individuals and companies who violate the FCPA may face significant collateral consequences, including suspension or debarment from contracting with the federal government, cross-debarment by multilateral development banks, and the suspension or revocation of certain export privileges.

Debarment

Under federal guidelines governing procurement, an individual or company that violates the FCPA or other criminal statutes may be barred from doing business with the federal government. The Federal Acquisition Regulations (FAR) provide for the potential suspension or debarment of companies that contract with the government upon conviction of or civil judgment for bribery, falsification or destruction of records, the making of false statements, or "[c]ommission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a Government contractor or subcontractor."[363] These measures are not intended to be punitive and may be imposed only if "in the public's interest for the Government's protection."[364]

Under the FAR, a decision to debar or suspend is discretionary. The decision is not made by DOJ prosecutors or SEC staff, but instead by independent debarment authorities within each agency, such as the Department of Defense or the General Services Administration, which analyze a number of factors to determine whether a company should be suspended, debarred, or otherwise determined to be ineligible for government contracting. Such factors include whether the contractor has effective internal control systems in place, self-reported the misconduct in a timely manner, and has taken remedial measures.[365] If a cause for debarment exists, the contractor has the burden of demonstrating to the satisfaction of the debarring official that it is presently responsible and that debarment is not necessary.[366] Each federal department and agency determines the eligibility of contractors with whom it deals. However, if one department or agency debars or suspends a contractor, the debarment or suspension applies to the entire executive branch of the federal government, unless a department or agency shows compelling reasons not to debar or suspend the contractor.[367]

Although guilty pleas, DPAs, and NPAs do not result in automatic debarment from U.S. government contracting, committing a federal crime and the factual admissions underlying a resolution are factors that the independent debarment authorities may consider. Moreover, indictment alone can lead to suspension of the right to do business with the government.[368] The U.S. Attorney's Manual also provides that when a company engages in fraud against the government, a prosecutor may not negotiate away an agency's right to debar or delist the company as part of the plea bargaining process.[369] In making debarment determinations, contracting agencies, including at the state and local level, may consult with DOJ in advance of awarding a contract. Depending on the circumstances, DOJ may provide information to contracting authorities in the context of the corporate settlement about the facts and circumstances underlying the criminal conduct and remediation measures undertaken by the company, if any. This information sharing is not advocacy, and the ultimate debarment decisions are squarely within the purview of the independent debarment authorities. In some situations, the contracting agency may impose its own oversight requirements in order for a company that has admitted to violations of federal law to be awarded federal contracts, such as the Corporate Integrity Agreements often required by the Department of Health and Human Services.

Cross-Debarment by Multilateral Development Banks

Multilateral Development Banks (MDBs), like the World Bank, also have the ability to debar companies and individuals for corrupt practices.[370] Each MDB has its own process for evaluating alleged corruption in connection with MDB-funded projects. When appropriate, DOJ and SEC work with MDBs to share evidence and refer cases. On April 9, 2010, the African Development Bank Group, the Asian Development Bank, the European Bank for

Reconstruction and Development, the Inter-American Development Bank Group, and the World Bank Group entered into an agreement under which entities debarred by one MDB will be sanctioned for the same misconduct by other signatory MDBs.[371] This cross-debarment agreement means that if a company is debarred by one MDB, it is debarred by all.[372]

Loss of Export Privileges

Companies and individuals who violate the FCPA may face consequences under other regulatory regimes, such as the Arms Export Control Act (AECA), 22 U.S.C. § 2751, *et seq.*, and its implementing regulations, the International Traffic in Arms Regulations (ITAR), 22 C.F.R. § 120, *et seq*. AECA and ITAR together provide for the suspension, revocation, amendment, or denial of an arms export license if an applicant has been indicted or convicted for violating the FCPA.[373] They also set forth certain factors for the Department of State's Directorate of Defense Trade Controls (DDTC)[374] to consider when determining whether to grant, deny, or return without action license applications for certain types of defense materials. One of those factors is whether there is reasonable cause to believe that an applicant for a license has violated (or conspired to violate) the FCPA; if so, the Department of State "may disapprove the application."[375] In addition, it is the policy of the Department of State not to consider applications for licenses involving any persons who have been convicted of violating the AECA or convicted of conspiracy to violate the AECA.[376] In an action related to the criminal resolution of a U.K. military products manufacturer, the DDTC imposed a "policy of denial" for export licenses on three of the company's subsidiaries that were involved in violations of AECA and ITAR.[377]

When Is a Compliance Monitor or Independent Consultant Appropriate?

One of the primary goals of both criminal prosecutions and civil enforcement actions against companies that violate the FCPA is ensuring that such conduct does not occur again. As a consequence, enhanced compliance and reporting requirements may be part of criminal and civil resolutions of FCPA matters. The amount of enhanced compliance and kind of reporting required varies according to the facts and circumstances of individual cases.

In criminal cases, a company's sentence, or a DPA or NPA with a company, may require the appointment of an independent corporate monitor. Whether a monitor is appropriate depends on the specific facts and circumstances of the case. In 2008, DOJ issued internal guidance regarding the selection and use of corporate monitors in DPAs and NPAs with companies. Additional guidance has since been issued.[378] A monitor is an independent third party who assesses and monitors a company's adherence to the compliance requirements of an agreement that was designed to reduce the risk of recurrence of the company's misconduct. Appointment of a monitor is not appropriate in all circumstances, but it may be appropriate, for example, where a company does not already have an effective internal compliance program or needs to establish necessary internal controls. In addition, companies are sometimes allowed to engage in self-monitoring, typically in cases when the company has made a voluntary disclosure, has been fully cooperative, and has demonstrated a genuine commitment to reform.

Factors DOJ and SEC Consider When Determining Whether a Compliance Monitor Is Appropriate Include:

- Seriousness of the offense
- Duration of the misconduct
- Pervasiveness of the misconduct, including whether the conduct cuts across geographic and/or product lines
- Nature and size of the company
- Quality of the company's compliance program at the time of the misconduct
- Subsequent remediation efforts

In civil cases, a company may similarly be required to retain an independent compliance consultant or monitor to provide an independent, third-party review of the company's internal controls. The consultant recommends improvements, to the extent necessary, which the company must adopt. When both DOJ and SEC require a company to retain a monitor, the two agencies have been able to coordinate their requirements so that the company can retain one monitor to fulfill both sets of requirements.

The most successful monitoring relationships are those in which the company embraces the monitor or consultant. If the company takes the recommendations and suggestions seriously and uses the monitoring period as a time to find and fix any outstanding compliance issues, the company can emerge from the monitorship with a stronger, long-lasting compliance program.

RESOLUTIONS

What Are the Different Types of Resolutions with DOJ?

Criminal Complaints, Informations, and Indictments

Charges against individuals and companies are brought in three different ways under the Federal Rules of Criminal Procedure: criminal complaints, criminal informations, and indictments.

DOJ may agree to resolve criminal FCPA matters against companies either through a declination or, in appropriate cases, a negotiated resolution resulting in a plea agreement, deferred prosecution agreement, or non-prosecution agreement. For individuals, a negotiated resolution will generally take the form of a plea agreement, which may include language regarding cooperation, or a non-prosecution cooperation agreement. When negotiated resolutions cannot be reached with companies or individuals, the matter may proceed to trial.

Plea Agreements

Plea agreements—whether with companies or individuals—are governed by Rule 11 of the Federal Rules of Criminal Procedure. The defendant generally admits to the facts supporting the charges, admits guilt, and is convicted of the charged crimes when the plea agreement is presented to and accepted by a court. The plea agreement may jointly recommend a sentence or fine, jointly recommend an analysis under the U.S. Sentencing Guidelines, or leave such items open for argument at the time of sentencing.

Deferred Prosecution Agreements

Under a deferred prosecution agreement, or a DPA as it is commonly known, DOJ files a charging document with the court,[379] but it simultaneously requests that the prosecution be deferred, that is, postponed for the purpose of allowing the company to demonstrate its good conduct. DPAs generally require a defendant to agree to pay a monetary penalty, waive the statute of limitations, cooperate with the government, admit the relevant facts, and enter into certain compliance and remediation commitments, potentially including a corporate compliance monitor. DPAs describe the company's conduct, cooperation, and remediation, if any, and provide a calculation of the penalty pursuant to the U.S. Sentencing Guidelines. In addition to being publicly filed, DOJ places all of its DPAs on its website. If the company successfully completes the term of the agreement (typically two or three years), DOJ will then move to dismiss the filed charges. A company's successful completion of a DPA is not treated as a criminal conviction.

Non-Prosecution Agreements

Under a non-prosecution agreement, or an NPA as it is commonly known, DOJ maintains the right to file charges but refrains from doing so to allow the company to demonstrate its good conduct during the term of the NPA. Unlike a DPA, an NPA is not filed with a court but is instead maintained by the parties. In circumstances where an NPA is with a company for FCPA-related offenses, it is made available to the public through DOJ's website. The requirements of an NPA are similar to those of a DPA, and generally require a waiver of the statute of limitations, ongoing cooperation, admission of the material facts, and compliance and remediation commitments, in addition to payment of a monetary penalty. If the company complies with the agreement throughout its term, DOJ does not file criminal charges. If an individual complies with the terms of his or her NPA, namely, truthful and complete cooperation and continued law-abiding conduct, DOJ will not pursue criminal charges.

Declinations

As discussed above, DOJ's decision to bring or decline to bring an enforcement action under the FCPA is made pursuant to the *Principles of Federal Prosecution*, in the case of individuals, and the *Principles of Federal Prosecution of Business Organizations*, in the case of companies. As described, in the case of individuals, the *Principles of Federal Prosecution* advise prosecutors to weigh all relevant considerations, including:

- federal law enforcement priorities;
- the nature and seriousness of the offense;
- the deterrent effect of prosecution;
- the person's culpability in connection with the offense;
- the person's history of criminal activity;
- the person's willingness to cooperate in the investigation or prosecution of others; and
- the probable sentence or other consequences if the person is convicted.[380]

The *Principles of Federal Prosecution* provide additional commentary about each of these factors. For instance, they explain that prosecutors should take into account federal law enforcement priorities because federal law enforcement and judicial resources are not sufficient to permit prosecution of every alleged offense over which federal jurisdiction exists. The deterrent effect of prosecution should also be kept in mind because some offenses, "although seemingly not of great importance by themselves, if commonly committed would have a substantial cumulative impact on the community."[381]

As discussed above, the *Principles of Federal Prosecution of Business Organizations* require prosecutors to consider nine factors when determining whether to prosecute a corporate entity for an FCPA violation, including the nature and seriousness of the offense; the pervasiveness of wrongdoing within the company; the company's history of similar conduct; the existence and effectiveness of the company's pre-existing compliance program; and the adequacy of remedies, such as civil or regulatory enforcement actions.

Pursuant to these guidelines, DOJ has declined to prosecute both individuals and corporate entities in numerous cases based on the particular facts and circumstances presented in those matters, taking into account the available evidence.[382] To protect the privacy rights and other interests of the uncharged and other potentially interested parties, DOJ has a long-standing policy not to provide, without the party's consent, non-public information on matters it has declined to prosecute. To put DOJ's declinations in context, however, in the past two years alone, DOJ has declined several dozen cases against companies where potential FCPA violations were alleged.

As mentioned above, there are rare occasions in which, in conjunction with the public filing of charges against an individual, it is appropriate to disclose that a company is not also being prosecuted. That was done in a recent case where a former employee was charged but the former corporate employer was not.[383]

What Are the Different Types of Resolutions with SEC?

Civil Injunctive Actions and Remedies

In a civil injunctive action, SEC seeks a court order compelling the defendant to obey the law in the future. Violating such an order can result in civil or criminal contempt proceedings. Civil contempt sanctions, brought by SEC, are remedial rather than punitive in nature and serve one of two purposes: to compensate the party injured as a result of the violation of the injunction or force compliance with the terms of the injunction.

Where a defendant has profited from a violation of law, SEC can obtain the equitable relief of disgorgement of ill-gotten gains and pre-judgment interest and can also obtain civil money penalties pursuant to Sections 21(d)(3) and 32(c) of the Exchange Act. SEC may also seek ancillary relief (such as an accounting from a defendant). Pursuant to Section 21(d)(5), SEC also may seek, and any federal court may grant, any other equitable relief that may be appropriate or necessary for the benefit of investors, such as enhanced remedial measures or the retention of an independent compliance consultant or monitor.

Civil Administrative Actions and Remedies

SEC has the ability to institute various types of administrative proceedings against a person or an entity that it believes has violated the law. This type of enforcement action is brought by SEC's Enforcement Division and is litigated before an SEC administrative law judge (ALJ). The ALJ's decision is subject to appeal directly to the Securities and Exchange Commission itself, and the Commission's decision is in turn subject to review by a U.S. Court of Appeals.

Administrative proceedings provide for a variety of relief. For regulated persons and entities, such as broker-dealers and investment advisers and persons associated with them, sanctions include censure, limitation on activities, suspension of up to twelve months, and bar from association or revocation of registration. For professionals such as attorneys and accountants, SEC can order in Rule 102(e) proceedings that the professional be censured, suspended, or barred from practicing before SEC.[384] SEC staff can seek an order from an administrative law judge requiring the respondent to cease and desist from any current or future violations of the securities laws. In addition, SEC can obtain disgorgement, pre-judgment interest, and civil money penalties in administrative proceedings under Section 21B of the Exchange Act, and also can obtain other equitable relief, such as enhanced remedial measures or the retention of an independent compliance consultant or monitor.

Deferred Prosecution Agreements

A deferred prosecution agreement is a written agreement between SEC and a potential cooperating individual or company in which SEC agrees to forego an enforcement action against the individual or company if the individual or company agrees to, among other things: (1) cooperate truthfully and fully in SEC's investigation and related enforcement actions; (2) enter into a long-term tolling agreement; (3) comply with express prohibitions and/or undertakings during a period of deferred prosecution; and (4) under certain circumstances, agree either to admit or not to contest underlying facts that SEC could assert to establish a violation of the federal securities laws. If the agreement is violated during the period of deferred prosecution, SEC staff may recommend an enforcement action to the Commission against the individual or company for the original misconduct as well as any additional misconduct. Furthermore, if the Commission authorizes the enforcement action, SEC staff may use any factual admissions made by the cooperating individual or company in support of a motion for summary judgment, while maintaining the ability to bring an enforcement action for any additional misconduct at a later date.

In May of 2011, SEC entered into its first deferred prosecution agreement against a company for violating the FCPA.[385] In that case, a global manufacturer of steel pipe products violated the FCPA by bribing Uzbekistan government officials during a bidding process to supply pipelines for transporting oil and natural gas. The company made almost $5 million in profits when it was subsequently awarded several contracts by the Uzbekistan government. The company discovered the misconduct during a worldwide review of its operations and brought it to the government's attention. In addition to self-reporting, the company conducted a thorough internal investigation; provided complete, real-time cooperation with SEC and DOJ staff; and undertook extensive remediation, including enhanced anti-corruption procedures and training. Under the terms of the DPA, the company paid $5.4 million in disgorgement and prejudgment interest. The company also paid a $3.5 million monetary penalty to resolve a criminal investigation by DOJ through an NPA.[386]

For further information about deferred prosecution agreements, see SEC's *Enforcement Manual*.[387]

Non-Prosecution Agreements

A non-prosecution agreement is a written agreement between SEC and a potential cooperating individual or company, entered into in limited and appropriate circumstances, that provides that SEC will not pursue an enforcement action against the individual or company if the individual or company agrees to, among other things: (1) cooperate truthfully and fully in SEC's investigation and related enforcement actions; and (2) comply, under certain circumstances, with express undertakings. If the agreement is violated, SEC staff retains its ability to recommend an enforcement action to the Commission against the individual or company.

For further information about non-prosecution agreements, see SEC's *Enforcement Manual*.[388]

Termination Letters and Declinations

As discussed above, SEC's decision to bring or decline to bring an enforcement action under the FCPA is made pursuant to the guiding principles set forth in SEC's *Enforcement Manual*. The same factors that apply to SEC staff's determination of whether to recommend an enforcement action against an individual or entity apply to the decision to close an investigation without recommending enforcement action.[389]

Generally, SEC staff considers, among other things:

- the seriousness of the conduct and potential violations;
- the resources available to SEC staff to pursue the investigation;
- the sufficiency and strength of the evidence;
- the extent of potential investor harm if an action is not commenced; and
- the age of the conduct underlying the potential violations.

SEC has declined to take enforcement action against both individuals and companies based on the facts and circumstances present in those matters, where, for example, the conduct was not egregious, the company fully cooperated, and the company identified and remediated the misconduct quickly. SEC Enforcement Division policy is to notify individuals and entities at the earliest opportunity when the staff has determined not to recommend an enforcement action against them to the Commission. This notification takes the form of a termination letter.

In order to protect the privacy rights and other interests of the uncharged and other potentially interested parties, SEC does not provide non-public information on matters it has declined to prosecute.

What Are Some Examples of Past Declinations by DOJ and SEC?

Neither DOJ nor SEC typically publicizes declinations but, to provide some insight into the process, the following are recent, anonymized examples of matters DOJ and SEC have declined to pursue:

Example 1: Public Company Declination

DOJ and SEC declined to take enforcement action against a public U.S. company. Factors taken into consideration included:

- The company discovered that its employees had received competitor bid information from a third party with connections to the foreign government.
- The company began an internal investigation, withdrew its contract bid, terminated the employees involved, severed ties to the third-party agent, and voluntarily disclosed the conduct to DOJ's Antitrust Division, which also declined prosecution.
- During the internal investigation, the company uncovered various FCPA red flags, including prior concerns about the third-party agent, all of which the company voluntarily disclosed to DOJ and SEC.
- The company immediately took substantial steps to improve its compliance program.

Example 2: Public Company Declination

DOJ and SEC declined to take enforcement action against a public U.S. company. Factors taken into consideration included:

- With knowledge of employees of the company's subsidiary, a retained construction company paid relatively small bribes, which were wrongly approved by the company's local law firm, to foreign building code inspectors.
- When the company's compliance department learned of the bribes, it immediately ended the conduct, terminated its relationship with the construction company and law firm, and terminated or disciplined the employees involved.
- The company completed a thorough internal investigation and voluntarily disclosed to DOJ and SEC.
- The company reorganized its compliance department, appointed a new compliance officer dedicated to anti-corruption, improved the training and compliance program, and undertook a review of all of the company's international third-party relationships.

Example 3: Public Company Declination

DOJ and SEC declined to take enforcement action against a U.S. publicly held industrial services company for bribes paid by a small foreign subsidiary. Factors taken into consideration included:

- The company self-reported the conduct to DOJ and SEC.
- The total amount of the improper payments was relatively small, and the activity appeared to be an isolated incident by a single employee at the subsidiary.
- The profits potentially obtained from the improper payments were very small.
- The payments were detected by the company's existing internal controls. The company's audit committee conducted a thorough independent internal investigation. The results of the investigation were provided to the government.
- The company cooperated fully with investigations by DOJ and SEC.
- The company implemented significant remedial actions and enhanced its internal control structure.

Example 4: Public Company Declination

DOJ and SEC declined to take enforcement action against a U.S. publicly held oil-and-gas services company for small bribes paid by a foreign subsidiary's customs agent. Factors taken into consideration included:

- The company's internal controls timely detected a potential bribe before a payment was made.
- When company management learned of the potential bribe, management immediately reported the issue to the company's General Counsel and Audit Committee and prevented the payment from occurring.
- Within weeks of learning of the attempted bribe, the company provided in-person FCPA training to employees of the subsidiary and undertook

an extensive internal investigation to determine whether any of the company's subsidiaries in the same region had engaged in misconduct.

- The company self-reported the misconduct and the results of its internal investigation to DOJ and SEC.
- The company cooperated fully with investigations by DOJ and SEC.
- In addition to the immediate training at the relevant subsidiary, the company provided comprehensive FCPA training to all of its employees and conducted an extensive review of its anti-corruption compliance program.
- The company enhanced its internal controls and record-keeping policies and procedures, including requiring periodic internal audits of customs payments.
- As part of its remediation, the company directed that local lawyers rather than customs agents be used to handle its permits, with instructions that "no matter what, we don't pay bribes"—a policy that resulted in a longer and costlier permit procedure.

Example 5: Public Company Declination

DOJ and SEC declined to take enforcement action against a U.S. publicly held consumer products company in connection with its acquisition of a foreign company. Factors taken into consideration included:

- The company identified the potential improper payments to local government officials as part of its pre-acquisition due diligence.
- The company promptly developed a comprehensive plan to investigate, correct, and remediate any FCPA issues after acquisition.
- The company promptly self-reported the issues prior to acquisition and provided the results of its investigation to the government on a real-time basis.
- The acquiring company's existing internal controls and compliance program were robust.
- After the acquisition closed, the company implemented a comprehensive remedial plan, ensured that all improper payments stopped, provided extensive FCPA training to employees of the new subsidiary, and promptly incorporated the new subsidiary into the company's existing internal controls and compliance environment.

Example 6: Private Company Declination

In 2011, DOJ declined to take prosecutorial action against a privately held U.S. company and its foreign subsidiary. Factors taken into consideration included:

- The company voluntarily disclosed bribes paid to social security officials in a foreign country.
- The total amount of the bribes was small.
- When discovered, the corrupt practices were immediately terminated.
- The conduct was thoroughly investigated, and the results of the investigation were promptly provided to DOJ.
- All individuals involved were either terminated or disciplined. The company also terminated its relationship with its foreign law firm.
- The company instituted improved training and compliance programs commensurate with its size and risk exposure.

chapter 7

Resolutions

WHISTLEBLOWER PROVISIONS AND PROTECTIONS

Assistance and information from a whistleblower who knows of possible securities law violations can be among the most powerful weapons in the law enforcement arsenal. Through their knowledge of the circumstances and individuals involved, whistleblowers can help SEC and DOJ identify potential violations much earlier than might otherwise have been possible, thus allowing SEC and DOJ to minimize the harm to investors, better preserve the integrity of the U.S. capital markets, and more swiftly hold accountable those responsible for unlawful conduct.

The Sarbanes-Oxley Act of 2002 and the Dodd-Frank Act of 2010 both contain provisions affecting whistleblowers who report FCPA violations. Sarbanes-Oxley prohibits issuers from retaliating against whistleblowers and provides that employees who are retaliated against for reporting possible securities law violations may file a complaint with the Department of Labor, for which they would be eligible to receive reinstatement, back pay, and other compensation.[390] Sarbanes-Oxley also prohibits retaliation against employee whistleblowers under the obstruction of justice statute.[391]

In 2010, the Dodd-Frank Act added Section 21F to the Exchange Act, addressing whistleblower incentives and protections. Section 21F authorizes SEC to provide monetary awards to eligible individuals who voluntarily come forward with high quality, original information that leads to an SEC enforcement action in which over $1,000,000 in sanctions is ordered.[392] The awards range is between 10% and 30% of the monetary sanctions recovered by the government. The Dodd-Frank Act also prohibits employers from retaliating against whistleblowers and creates a private right of action for employees who are retaliated against.[393]

Furthermore, businesses should be aware that retaliation against a whistleblower may also violate state, local, and foreign laws that provide protection of whistleblowers.

On August 12, 2011, the final rules for SEC's Whistleblower Program became effective. These rules set forth the requirements for whistleblowers to be eligible for awards consideration, the factors that SEC will use to determine the amount of the award, the categories of individuals who are excluded from award consideration, and the categories of individuals who are subject to limitations in award considerations.[394] The final rules strengthen incentives for employees to report the suspected violations internally through internal compliance programs when appropriate, although it does not require an employee to do so in order to qualify for an award.[395]

Individuals with information about a possible violation of the federal securities laws, including FCPA violations, should submit that information to SEC either online through SEC's Tips, Complaints, and Referrals (TCR) Intake and Resolution System (available at https://denebleo.sec.gov/TCRExternal/disclaimer.xhtml) or by mailing or faxing a completed Form TCR to the Commission's Office of the Whistleblower.

Whistleblowers can submit information anonymously. To be considered under SEC's whistleblower program as eligible for a reward, however, the information must be submitted on an anonymous whistleblower's behalf by an attorney.[396] Whether or not a whistleblower reports anonymously, SEC is committed to protecting the identity of a whistleblower to the fullest extent possible under the statute.[397] SEC's Office of the Whistleblower administers SEC's Whistleblower Program and answers questions from the public regarding the program. Additional information regarding SEC's Whistleblower Program, including answers to frequently asked questions, is available online at http://www.sec.gov/whistleblower.

SEC Office of the Whistleblower

100 F Street NE, Mail Stop 5971
Washington, DC 20549
Facsimile: (703) 813-9322
Online Report Form: http://www.sec.gov/whistleblower

chapter 8

Whistleblower Provisions and Protections

DOJ OPINION PROCEDURE

DOJ's opinion procedure is a valuable mechanism for companies and individuals to determine whether proposed conduct would be prosecuted by DOJ under the FCPA.[398] Generally speaking, under the opinion procedure process, parties submit information to DOJ, after which DOJ issues an opinion about whether the proposed conduct falls within its enforcement policy. All of DOJ's prior opinions are available online.[399] Parties interested in obtaining such an opinion should follow these steps:[400]

First, those seeking an opinion should evaluate whether their question relates to actual, prospective conduct.[401] The opinion procedure cannot be used to obtain opinions on purely historical conduct or on hypothetical questions. DOJ will not consider a request unless that portion of the transaction for which an opinion is sought involves only prospective conduct, although the transaction as a whole may have components that already have occurred. An executed contract is not a prerequisite and, in most—if not all—instances, an opinion request should be made before the requestor commits to proceed with a transaction.[402] Those seeking requests should be aware that FCPA opinions relate only to the FCPA's anti-bribery provisions.[403]

Second, before making the request, the company or individual should check that they are either an issuer or a domestic concern, as only those categories of parties can receive an opinion.[404] If the transaction involves more than one issuer or domestic concern, consider making a request for an opinion jointly, as opinions only apply to the parties that request them.[405]

Third, those seeking an opinion must put their request in writing. The request must be specific and accompanied by all relevant and material information bearing on the conduct and circumstances for which an opinion is requested. Material information includes background information, complete copies of all operative documents, and detailed statements of all collateral or oral understandings, if any. Those seeking opinions are under an affirmative obligation to make full and true disclosures.[406] Materials disclosed to DOJ will not be made public without the consent of the party submitting them.[407]

Fourth, the request must be signed. For corporate requestors, the signatory should be an appropriate senior officer with operational responsibility for the conduct that is the subject of the request and who has been designated by the corporation's chief executive officer. In appropriate cases, DOJ also may require the chief executive officer to sign the request. Those signing the request must certify that it contains a true, correct, and complete disclosure with respect to the proposed conduct and the circumstances of the conduct.[408]

Fifth, an original and five copies of the request should be addressed to the Assistant Attorney General in charge of the Criminal Division, Attention: FCPA Opinion Group.[409] The mailing address is P.O. Box 28188 Central Station, Washington, D.C. 20038. DOJ also asks that you send an electronic courtesy copy to FCPA.Fraud@usdoj.gov.

DOJ will evaluate the request for an FCPA opinion.[410] A party may withdraw a request for an opinion at any time prior to the release of an opinion.[411] If the request is complete and all the relevant information has been submitted, DOJ will respond to the request by issuing an opinion within 30 days.[412] If the request is incomplete, DOJ will identify for the requestor what additional information or documents are required for DOJ to review the request. Such information must be provided to DOJ promptly. Once the additional information has been received, DOJ will issue an opinion within 30 days of receipt of that additional information.[413] DOJ's FCPA opinions state whether, for purposes of DOJ's present enforcement policy, the prospective conduct would violate either the issuer or domestic concern anti-bribery provisions of the FCPA.[414] DOJ also may take other positions in the opinion as it considers appropriate.[415] To the extent that the opinion concludes that the proposed conduct would not violate the FCPA, a rebuttable presumption is created that the requestor's conduct that was the basis of the opinion is in compliance with the FCPA.[416] In order to provide non-binding guidance to the business community, DOJ makes versions of its opinions publicly available on its website.[417]

If, after receiving an opinion, a party is concerned about prospective conduct that is beyond the scope of conduct specified in a previous request, the party may submit an additional request for an opinion using the procedures outlined above.[418]

chapter 9

DOJ Opinion Procedure

CONCLUSION

The FCPA was designed to prevent corrupt practices, protect investors, and provide a fair playing field for those honest companies trying to win business based on quality and price rather than bribes. Following Congress' leadership in enacting the FCPA 35 years ago, and through determined international diplomatic and law enforcement efforts in the time since, laws like the FCPA prohibiting foreign bribery have been enacted by most of the United States' major trading partners.

This guide is designed to provide practical advice about, and useful insights into, our enforcement considerations. For businesses desiring to compete fairly in foreign markets, it is our goal to maximize those businesses' ability to comply with the FCPA in the most effective and efficient way suitable to their business and the markets in which they operate. Through our ongoing efforts with the U.S. and international business and legal communities and non-governmental organizations, DOJ and SEC can continue effectively to protect the integrity of our markets and reduce corruption around the world.

THE FOREIGN CORRUPT PRACTICES ACT:

15 U.S.C. §§ 78dd-1, 78dd-2, 78dd-3, 78m, 78ff

15 U.S.C. § 78dd-1 [Section 30A of the Securities Exchange Act of 1934] Prohibited foreign trade practices by issuers

(a) Prohibition

It shall be unlawful for any issuer which has a class of securities registered pursuant to section 78l of this title or which is required to file reports under section 78o(d) of this title, or for any officer, director, employee, or agent of such issuer or any stockholder thereof acting on behalf of such issuer, to make use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay, or authorization of the payment of any money, or offer, gift, promise to give, or authorization of the giving of anything of value to—

(1) any foreign official for purposes of—

(A) (i) influencing any act or decision of such foreign official in his official capacity, (ii) inducing such foreign official to do or omit to do any act in violation of the lawful duty of such official, or (iii) securing any improper advantage; or

(B) inducing such foreign official to use his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality, in order to assist such issuer in obtaining or retaining business for or with, or directing business to, any person;

(2) any foreign political party or official thereof or any candidate for foreign political office for purposes of—

(A) (i) influencing any act or decision of such party, official, or candidate in its or his official capacity, (ii) inducing such party, official, or candidate to do or omit to do an act in violation of the lawful duty of such party, official, or candidate, or (iii) securing any improper advantage; or

(B) inducing such party, official, or candidate to use its or his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality, in order to assist such issuer in obtaining or retaining business for or with, or directing business to, any person; or

(3) any person, while knowing that all or a portion of such money or thing of value will be offered, given, or promised, directly or indirectly, to any foreign official, to any foreign political party or official thereof, or to any candidate for foreign political office, for purposes of—

(A) (i) influencing any act or decision of such foreign official, political party, party official, or candidate in his or its official capacity, (ii) inducing such foreign official, political party, party official, or candidate to do or omit to do any act in violation of the lawful duty of such foreign official, political party, party official, or candidate, or (iii) securing any improper advantage; or

(B) inducing such foreign official, political party, party official, or candidate to use his or its influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality, in order to assist such issuer in obtaining or retaining business for or with, or directing business to, any person.

(b) Exception for routine governmental action

Subsections (a) and (g) of this section shall not apply to any facilitating or expediting payment to a foreign official, political party, or party official the purpose of which is to expedite or to secure the performance of a routine governmental action by a foreign official, political party, or party official.

(c) Affirmative defenses

It shall be an affirmative defense to actions under subsection (a) or (g) of this section that—

(1) the payment, gift, offer, or promise of anything of value that was made, was lawful under the written laws and regulations of the foreign official's, political party's, party official's, or candidate's country; or

(2) the payment, gift, offer, or promise of anything of value that was made, was a reasonable and bona fide expenditure, such as travel and lodging expenses, incurred by or on behalf of a foreign official, party, party official, or candidate and was directly related to—

(A) the promotion, demonstration, or explanation of products or services; or

(B) the execution or performance of a contract with a foreign government or agency thereof.

(d) Guidelines by Attorney General

Not later than one year after August 23, 1988, the Attorney General, after consultation with the Commission, the Secretary of Commerce, the United States Trade Representative, the Secretary of State, and the Secretary of the Treasury, and after obtaining the views of all interested persons through public notice and comment procedures, shall determine to what extent compliance with this section would be enhanced and the business community would be assisted by further clarification of the preceding provisions of this section and may, based on such determination and to the extent necessary and appropriate, issue—

(1) guidelines describing specific types of conduct, associated with common types of export sales arrangements and business contracts, which for purposes of the Department of Justice's present enforcement policy, the Attorney General determines would be in conformance with the preceding provisions of this section; and

(2) general precautionary procedures which issuers may use on a voluntary basis to conform their conduct to the Department of Justice's present enforcement policy regarding the preceding provisions of this section. The Attorney General shall issue the guidelines and procedures referred to in the preceding sentence in accordance with the provisions of subchapter II of chapter 5 of Title 5 and those guidelines and procedures shall be subject to the provisions of chapter 7 of that title.

(e) Opinions of Attorney General

(1) The Attorney General, after consultation with appropriate departments and agencies of the United States and after obtaining the views of all interested persons through public notice and comment procedures, shall establish a procedure to provide responses to specific inquiries by issuers concerning conformance of their conduct with the Department of Justice's present enforcement policy regarding the preceding provisions of this section. The Attorney General shall, within 30 days after receiving such a request, issue an opinion in response to that request. The opinion shall state whether or not certain specified prospective conduct would, for purposes of the Department of Justice's present enforcement policy, violate the preceding provisions of this section. Additional requests for opinions may be filed with the Attorney General regarding other specified prospective conduct that is beyond the scope of conduct specified in previous requests. In any action brought under the applicable provisions of this section, there shall be a rebuttable presumption that conduct, which is specified in a request by an issuer and for which the Attorney General has issued an opinion that such conduct is in conformity with the Department of Justice's present enforcement policy, is in compliance with the preceding provisions of this section. Such a presumption may be rebutted by a preponderance of the evidence. In considering the presumption for purposes of this paragraph, a court shall weight all relevant factors, including but not limited to whether the information submitted to the Attorney General was accurate and complete and whether it was within the scope of the conduct specified in any request received by the Attorney General. The Attorney General shall establish the procedure required by this paragraph in accordance with the provisions of subchapter II of chapter 5 of Title 5 and that procedure shall be subject to the provisions of chapter 7 of that title.

(2) Any document or other material which is provided to, received by, or prepared in the Department of Justice or any other department or agency of the United States in connection with a request by an issuer under the procedure established under paragraph (1), shall be exempt from disclosure under section 552 of Title 5 and shall not, except with the consent of the issuer, be made publicly available, regardless of whether the Attorney General responds to such a request or the issuer withdraws such request before receiving a response.

(3) Any issuer who has made a request to the Attorney General under paragraph (1) may withdraw such request prior to the time the Attorney General issues an opinion in response to such request. Any request so withdrawn shall have no force or effect.

(4) The Attorney General shall, to the maximum extent practicable, provide timely guidance concerning the Department of Justice's

present enforcement policy with respect to the preceding provisions of this section to potential exporters and small businesses that are unable to obtain specialized counsel on issues pertaining to such provisions. Such guidance shall be limited to responses to requests under paragraph (1) concerning conformity of specified prospective conduct with the Department of Justice's present enforcement policy regarding the preceding provisions of this section and general explanations of compliance responsibilities and of potential liabilities under the preceding provisions of this section.

(f) Definitions

For purposes of this section:

(1)(A) The term "foreign official" means any officer or employee of a foreign government or any department, agency, or instrumentality thereof, or of a public international organization, or any person acting in an official capacity for or on behalf of any such government or department, agency, or instrumentality, or for or on behalf of any such public international organization.

(B) For purposes of subparagraph (A), the term "public international organization" means—
(i) an organization that is designated by Executive Order pursuant to section 1 of the International Organizations Immunities Act (22 U.S.C. § 288); or
(ii) any other international organization that is designated by the President by Executive order for the purposes of this section, effective as of the date of publication of such order in the Federal Register.

(2) (A) A person's state of mind is "knowing" with respect to conduct, a circumstance, or a result if—
(i) such person is aware that such person is engaging in such conduct, that such circumstance exists, or that such result is substantially certain to occur; or
(ii) such person has a firm belief that such circumstance exists or that such result is substantially certain to occur.

(B) When knowledge of the existence of a particular circumstance is required for an offense, such knowledge is established if a person is aware of a high probability of the existence of such circumstance, unless the person actually believes that such circumstance does not exist.

(3)(A) The term "routine governmental action" means only an action which is ordinarily and commonly performed by a foreign official in—
(i) obtaining permits, licenses, or other official documents to qualify a person to do business in a foreign country;
(ii) processing governmental papers, such as visas and work orders;
(iii) providing police protection, mail pick-up and delivery, or scheduling inspections associated with contract performance or inspections related to transit of goods across country;
(iv) providing phone service, power and water supply, loading and unloading cargo, or protecting perishable products or commodities from deterioration; or
(v) actions of a similar nature.

(B) The term "routine governmental action" does not include any decision by a foreign official whether, or on what terms, to award new business to or to continue business with a particular party, or any action taken by a foreign official involved in the decision-making process to encourage a decision to award new business to or continue business with a particular party.

(g) Alternative Jurisdiction

(1) It shall also be unlawful for any issuer organized under the laws of the United States, or a State, territory, possession, or commonwealth of the United States or a political subdivision thereof and which has a class of securities registered pursuant to section 78*l* of this title or which is required to file reports under section 78o(d)) of this title, or for any United States person that is an officer, director, employee, or agent of such issuer or a stockholder thereof acting on behalf of such issuer, to corruptly do any act outside the United States in furtherance of an offer, payment, promise to pay, or authorization of the payment of any money, or offer, gift, promise to give, or authorization of the giving of anything of value to any of the persons or entities set forth in paragraphs (1), (2), and (3) of this subsection (a) of this section for the purposes set forth therein, irrespective of whether such issuer or such officer, director, employee, agent, or stockholder makes use of the mails or any means or instrumentality of interstate commerce in furtherance of such offer, gift, payment, promise, or authorization.

(2) As used in this subsection, the term "United States person" means a national of the United States (as defined in section 101 of the Immigration and Nationality Act (8 U.S.C. § 1101)) or any corporation, partnership, association, joint-stock company, business trust, unincorporated organization, or sole proprietorship organized under the laws of the United States or any State, territory, possession, or commonwealth of the United States, or any political subdivision thereof.

15 U.S.C. § 78dd-2 Prohibited foreign trade practices by domestic concerns

(a) Prohibition

It shall be unlawful for any domestic concern, other than an issuer which is subject to section 78dd-1 of this title, or for any officer, director, employee, or agent of such domestic concern or any stockholder thereof acting on behalf of such domestic concern, to make use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay, or authorization of the payment of any money, or offer, gift, promise to give, or authorization of the giving of anything of value to—

(1) any foreign official for purposes of—

(A) (i) influencing any act or decision of such foreign official in his official capacity, (ii) inducing such foreign official to do or omit to do any act in violation of the lawful duty of such official, or (iii) securing any improper advantage; or

(B) inducing such foreign official to use his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality, in order to assist such domestic concern in obtaining or retaining business for or with, or directing business to, any person; or

(2) any foreign political party or official thereof or any candidate for foreign political office for purposes of—

(A) (i) influencing any act or decision of such party, official, or candidate in its or his official capacity, (ii) inducing such party, official, or candidate to do or omit to do an act in violation of the lawful duty of such party, official, or candidate, or (iii) securing any improper advantage; or

(B) inducing such party, official, or candidate to use its or his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality, in order to assist such domestic concern in obtaining or retaining business for or with, or directing business to, any person;

(3) any person, while knowing that all or a portion of such money or thing of value will be offered, given, or promised, directly or indirectly, to any foreign official, to any foreign political party or official thereof, or to any candidate for foreign political office, for purposes of—

(A) (i) influencing any act or decision of such foreign official, political party, party official, or candidate in his or its official capacity, (ii) inducing such foreign official, political party, party official, or candidate to do or omit to do any act in violation of the lawful duty of such foreign official, political party, party official, or candidate, or (iii) securing any improper advantage; or

(B) inducing such foreign official, political party, party official, or candidate to use his or its influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality, in order to assist such domestic concern in obtaining or retaining business for or with, or directing business to, any person.

(b) Exception for routine governmental action

Subsections (a) and (i) of this section shall not apply to any facilitating or expediting payment to a foreign official, political party, or party official the purpose of which is to expedite or to secure the performance of a routine governmental action by a foreign official, political party, or party official.

(c) Affirmative defenses

It shall be an affirmative defense to actions under subsection (a) or (i) of this section that—

(1) the payment, gift, offer, or promise of anything of value that was made, was lawful under the written laws and regulations of the foreign official's, political party's, party official's, or candidate's country; or

(2) the payment, gift, offer, or promise of anything of value that was made, was a reasonable and bona fide expenditure, such as travel and lodging expenses, incurred by or on behalf of a foreign official, party, party official, or candidate and was directly related to—

(A) the promotion, demonstration, or explanation of products or services; or

(B) the execution or performance of a contract with a foreign government or agency thereof.

(d) Injunctive relief

(1) When it appears to the Attorney General that any domestic concern to which this section applies, or officer, director, employee, agent, or stockholder thereof, is engaged, or about to engage, in any act or practice constituting a violation of subsection (a) or (i) of this section, the Attorney General may, in his discretion, bring a civil action in an appropriate district court of the United States to enjoin such act or practice, and upon a proper showing, a permanent injunction or a temporary restraining order shall be granted without bond.

(2) For the purpose of any civil investigation which, in the opinion of the Attorney General, is necessary and proper to enforce this section, the Attorney General or his designee are empowered to administer oaths and affirmations, subpoena witnesses, take evidence, and require the production of any books, papers, or other documents which the Attorney General deems relevant or material to such investigation. The attendance of witnesses and the production of documentary evidence may be required from any place in the United States, or any territory, possession, or commonwealth of the United States, at any designated place of hearing.

(3) In case of contumacy by, or refusal to obey a subpoena issued to, any person, the Attorney General may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, papers, or other documents. Any such court may issue an order requiring such person to appear before the Attorney General or his designee, there to produce records, if so

ordered, or to give testimony touching the matter under investigation. Any failure to obey such order of the court may be punished by such court as a contempt thereof. All process in any such case may be served in the judicial district in which such person resides or may be found. The Attorney General may make such rules relating to civil investigations as may be necessary or appropriate to implement the provisions of this subsection.

(e) Guidelines by Attorney General

Not later than 6 months after August 23, 1988, the Attorney General, after consultation with the Securities and Exchange Commission, the Secretary of Commerce, the United States Trade Representative, the Secretary of State, and the Secretary of the Treasury, and after obtaining the views of all interested persons through public notice and comment procedures, shall determine to what extent compliance with this section would be enhanced and the business community would be assisted by further clarification of the preceding provisions of this section and may, based on such determination and to the extent necessary and appropriate, issue—

(1) guidelines describing specific types of conduct, associated with common types of export sales arrangements and business contracts, which for purposes of the Department of Justice's present enforcement policy, the Attorney General determines would be in conformance with the preceding provisions of this section; and

(2) general precautionary procedures which domestic concerns may use on a voluntary basis to conform their conduct to the Department of Justice's present enforcement policy regarding the preceding provisions of this section.

The Attorney General shall issue the guidelines and procedures referred to in the preceding sentence in accordance with the provisions of subchapter II of chapter 5 of Title 5 and those guidelines and procedures shall be subject to the provisions of chapter 7 of that title.

(f) Opinions of Attorney General

(1) The Attorney General, after consultation with appropriate departments and agencies of the United States and after obtaining the views of all interested persons through public notice and comment procedures, shall establish a procedure to provide responses to specific inquiries by domestic concerns concerning conformance of their conduct with the Department of Justice's present enforcement policy regarding the preceding provisions of this section. The Attorney General shall, within 30 days after receiving such a request, issue an opinion in response to that request. The opinion shall state whether or not certain specified prospective conduct would, for purposes of the Department of Justice's present enforcement policy, violate the preceding provisions of this section. Additional requests for opinions may be filed with the Attorney General regarding other specified prospective conduct that is beyond the scope of conduct specified in previous requests. In any action brought under the applicable provisions of this section, there shall be a rebuttable presumption that conduct, which is specified in a request by a domestic concern and for which the Attorney General has issued an opinion that such conduct is in conformity with the Department of Justice's present enforcement policy, is in compliance with the preceding provisions of this section. Such a presumption may be rebutted by a preponderance of the evidence. In considering the presumption for purposes of this paragraph, a court shall weigh all relevant factors, including but not limited to whether the information submitted to the Attorney General was accurate and complete and whether it was within the scope of the conduct specified in any request received by the Attorney General. The Attorney General shall establish the procedure required by this paragraph in accordance with the provisions of subchapter II of chapter 5 of Title 5 and that procedure shall be subject to the provisions of chapter 7 of that title.

(2) Any document or other material which is provided to, received by, or prepared in the Department of Justice or any other department or agency of the United States in connection with a request by a domestic concern under the procedure established under paragraph (1), shall be exempt from disclosure under section 552 of Title 5 and shall not, except with the consent of the domestic concern, by made publicly available, regardless of whether the Attorney General response to such a request or the domestic concern withdraws such request before receiving a response.

(3) Any domestic concern who has made a request to the Attorney General under paragraph (1) may withdraw such request prior to the time the Attorney General issues an opinion in response to such request. Any request so withdrawn shall have no force or effect.

(4) The Attorney General shall, to the maximum extent practicable, provide timely guidance concerning the Department of Justice's present enforcement policy with respect to the preceding provisions of this section to potential exporters and small businesses that are unable to obtain specialized counsel on issues pertaining to such provisions. Such guidance shall be limited to responses to requests under paragraph (1) concerning conformity of specified prospective conduct with the Department of Justice's present enforcement policy regarding the preceding provisions of this section and general explanations of compliance responsibilities and of potential liabilities under the preceding provisions of this section.

(g) Penalties

(1)(A) Any domestic concern that is not a natural person and that violates subsection (a) or (i) of this section shall be fined not more than $2,000,000.

(B) Any domestic concern that is not a natural person and that violates subsection (a) or (i) of this section shall be subject to a civil penalty of not more than $10,000 imposed in an action brought by the Attorney General.

(2)(A) Any natural person that is an officer, director, employee, or agent of a domestic concern, or stockholder acting on behalf of such domestic concern, who willfully violates subsection (a) or (i) of this section shall be fined not more than $100,000 or imprisoned not more than 5 years, or both.

(B) Any natural person that is an officer, director, employee, or agent of a domestic concern, or stockholder acting on behalf of such domestic concern, who violates subsection (a) or (i) of this section shall be subject to a civil penalty of not more than $10,000 imposed in an action brought by the Attorney General.

(3) Whenever a fine is imposed under paragraph (2) upon any officer, director, employee, agent, or stockholder of a domestic concern, such fine may not be paid, directly or indirectly, by such domestic concern.

(h) Definitions

For purposes of this section:

(1) The term "domestic concern" means—

(A) any individual who is a citizen, national, or resident of the United States; and

(B) any corporation, partnership, association, joint-stock company, business trust, unincorporated organization, or sole proprietorship which has its principal place of business in the United States, or which is organized under the laws of a State of the United States or a territory, possession, or commonwealth of the United States.

(2)(A) The term "foreign official" means any officer or employee of a foreign government or any department, agency, or instrumentality thereof, or of a public international organization, or any person acting in an official capacity for or on behalf of any such government or department, agency, or instrumentality, or for or on behalf of any such public international organization.

(B) For purposes of subparagraph (A), the term "public international organization" means—

(i) an organization that has been designated by Executive order pursuant to Section 1 of the International Organizations Immunities Act (22 U.S.C. § 288); or

(ii) any other international organization that is designated by the President by Executive order for the purposes of this section, effective as of the date of publication of such order in the Federal Register.

(3)(A) A person's state of mind is "knowing" with respect to conduct, a circumstance, or a result if—
(i) such person is aware that such person is engaging in such conduct, that such circumstance exists, or that such result is substantially certain to occur; or
(ii) such person has a firm belief that such circumstance exists or that such result is substantially certain to occur.

(B) When knowledge of the existence of a particular circumstance is required for an offense, such knowledge is established if a person is aware of a high probability of the existence of such circumstance, unless the person actually believes that such circumstance does not exist.

(4)(A) The term "routine governmental action" means only an action which is ordinarily and commonly performed by a foreign official in—
(i) obtaining permits, licenses, or other official documents to qualify a person to do business in a foreign country;
(ii) processing governmental papers, such as visas and work orders;
(iii) providing police protection, mail pick-up and delivery, or scheduling inspections associated with contract performance or inspections related to transit of goods across country;
(iv) providing phone service, power and water supply, loading and unloading cargo, or protecting perishable products or commodities from deterioration; or
(v) actions of a similar nature.

(B) The term "routine governmental action" does not include any decision by a foreign official whether, or on what terms, to award new business to or to continue business with a particular party, or any action taken by a foreign official involved in the decision-making process to encourage a decision to award new business to or continue business with a particular party.

(5) The term "interstate commerce" means trade, commerce, transportation, or communication among the several States, or between any foreign country and any State or between any State and any place or ship outside thereof, and such term includes the intrastate use of—

(A) a telephone or other interstate means of communication, or

(B) any other interstate instrumentality.

(i) Alternative Jurisdiction

(1) It shall also be unlawful for any United States person to corruptly do any act outside the United States in furtherance of an offer, payment, promise to pay, or authorization of the payment of any money, or offer, gift, promise to give, or authorization of the giving of anything of value to any of the persons or entities set forth in paragraphs (1), (2), and (3) of subsection (a), for the purposes set forth therein, irrespective of whether such United States person makes use of the mails or any means or instrumentality of interstate commerce in furtherance of such offer, gift, payment, promise, or authorization.

(2) As used in this subsection, a "United States person" means a national of the United States (as defined in section 101 of the Immigration and Nationality Act (8 U.S.C. § 1101)) or any corporation, partnership, association, joint-stock company, business trust, unincorporated organization, or sole proprietorship organized under the laws of the United States or any State, territory, possession, or commonwealth of the United States, or any political subdivision thereof.

15 U.S.C. § 78dd-3 Prohibited foreign trade practices by persons other than issuers or domestic concerns

(a) Prohibition

It shall be unlawful for any person other than an issuer that is subject to section 78dd-1 [Section 30A of the Exchange Act] of this title or a domestic concern, or for any officer, director, employee, or agent of such person or any stockholder thereof acting on behalf of such person, while in the territory of the United States, corruptly to make use of the mails or any means or instrumentality of interstate commerce or to do any other act in furtherance of an offer, payment, promise to pay, or authorization of the payment of any money, or offer, gift, promise to give, or authorization of the giving of anything of value to—

(1) any foreign official for purposes of—

(A) (i) influencing any act or decision of such foreign official in his official capacity, (ii) inducing such foreign official to do or omit to do any act in violation of the lawful duty of such official, or (iii) securing any improper advantage; or

(B) inducing such foreign official to use his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality, in order to assist such person in obtaining or retaining business for or with, or directing business to, any person;

(2) any foreign political party or official thereof or any candidate for foreign political office for purposes of—

(A) (i) influencing any act or decision of such party, official, or candidate in its or his official capacity, (ii) inducing such party, official, or candidate to do or omit to do an act in violation of the lawful duty of such party, official, or candidate, or (iii) securing any improper advantage; or

(B) inducing such party, official, or candidate to use its or his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality, in order to assist such person in obtaining or retaining business for or with, or directing business to, any person; or

(3) any person, while knowing that all or a portion of such money or thing of value will be offered, given, or promised, directly or indirectly, to any foreign official, to any foreign political party or official thereof, or to any candidate for foreign political office, for purposes of—

(A) (i) influencing any act or decision of such foreign official, political party, party official, or candidate in his or its official capacity, (ii) inducing such foreign official, political party, party official, or candidate to do or omit to do any act in violation of the lawful duty of such foreign official, political party, party official, or candidate, or (iii) securing any improper advantage; or

(B) inducing such foreign official, political party, party official, or candidate to use his or its influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality, in order to assist such person in obtaining or retaining business for or with, or directing business to, any person.

(b) Exception for routine governmental action

Subsection (a) of this section shall not apply to any facilitating or expediting payment to a foreign official, political party, or party official the purpose of which is to expedite or to secure the performance of a routine governmental action by a foreign official, political party, or party official.

(c) Affirmative defenses

It shall be an affirmative defense to actions under subsection (a) of this section that—

(1) the payment, gift, offer, or promise of anything of value that was made, was lawful under the written laws and regulations of the foreign official's, political party's, party official's, or candidate's country; or

(2) the payment, gift, offer, or promise of anything of value that was made, was a reasonable and bona fide expenditure, such as travel and lodging expenses, incurred by or on behalf of a foreign official, party, party official, or candidate and was directly related to—

(A) the promotion, demonstration, or explanation of products or services; or

(B) the execution or performance of a contract with a foreign government or agency thereof.

(d) Injunctive relief

(1) When it appears to the Attorney General that any person to which this section applies, or officer, director, employee, agent, or stockholder thereof, is engaged, or about to engage, in any act or practice

constituting a violation of subsection (a) of this section, the Attorney General may, in his discretion, bring a civil action in an appropriate district court of the United States to enjoin such act or practice, and upon a proper showing, a permanent injunction or a temporary restraining order shall be granted without bond.

(2) For the purpose of any civil investigation which, in the opinion of the Attorney General, is necessary and proper to enforce this section, the Attorney General or his designee are empowered to administer oaths and affirmations, subpoena witnesses, take evidence, and require the production of any books, papers, or other documents which the Attorney General deems relevant or material to such investigation. The attendance of witnesses and the production of documentary evidence may be required from any place in the United States, or any territory, possession, or commonwealth of the United States, at any designated place of hearing.

(3) In case of contumacy by, or refusal to obey a subpoena issued to, any person, the Attorney General may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, papers, or other documents. Any such court may issue an order requiring such person to appear before the Attorney General or his designee, there to produce records, if so ordered, or to give testimony touching the matter under investigation. Any failure to obey such order of the court may be punished by such court as a contempt thereof.

(4) All process in any such case may be served in the judicial district in which such person resides or may be found. The Attorney General may make such rules relating to civil investigations as may be necessary or appropriate to implement the provisions of this subsection.

(e) Penalties

(1)(A) Any juridical person that violates subsection (a) of this section shall be fined not more than $2,000,000.

(B) Any juridical person that violates subsection (a) of this section shall be subject to a civil penalty of not more than $10,000 imposed in an action brought by the Attorney General.

(2)(A) Any natural person who willfully violates subsection (a) of this section shall be fined not more than $100,000 or imprisoned not more than 5 years, or both.

(B) Any natural person who violates subsection (a) of this section shall be subject to a civil penalty of not more than $10,000 imposed in an action brought by the Attorney General.

(3) Whenever a fine is imposed under paragraph (2) upon any officer, director, employee, agent, or stockholder of a person, such fine may not be paid, directly or indirectly, by such person.

(f) Definitions

For purposes of this section:

(1) The term "person," when referring to an offender, means any natural person other than a national of the United States (as defined in 8 U.S.C. § 1101) or any corporation, partnership, association, joint-stock company, business trust, unincorporated organization, or sole proprietorship organized under the law of a foreign nation or a political subdivision thereof

(2)(A) The term "foreign official" means any officer or employee of a foreign government or any department, agency, or instrumentality thereof, or of a public international organization, or any person acting in an official capacity for or on behalf of any such government or department, agency, or instrumentality, or for or on behalf of any such public international organization.

For purposes of subparagraph (A), the term "public international organization" means—
(i) an organization that has been designated by Executive Order pursuant to Section 1 of the International Organizations Immunities Act (22 U.S.C. § 288); or
(ii) any other international organization that is designated by the President by Executive order for the purposes of this section, effective as of the date of publication of such order in the Federal Register.

(3)(A) A person's state of mind is "knowing" with respect to conduct, a circumstance, or a result if—
(i) such person is aware that such person is engaging in such conduct, that such circumstance exists, or that such result is substantially certain to occur; or
(ii) such person has a firm belief that such circumstance exists or that such result is substantially certain to occur.

(B) When knowledge of the existence of a particular circumstance is required for an offense, such knowledge is established if a person is aware of a high probability of the existence of such circumstance, unless the person actually believes that such circumstance does not exist.

(4)(A) The term "routine governmental action" means only an action which is ordinarily and commonly performed by a foreign official in—
(i) obtaining permits, licenses, or other official documents to qualify a person to do business in a foreign country;
(ii) processing governmental papers, such as visas and work orders;
(iii) providing police protection, mail pick-up and delivery, or scheduling inspections associated with contract performance or inspections related to transit of goods across country;
(iv) providing phone service, power and water supply, loading and unloading cargo, or protecting perishable products or commodities from deterioration; or
(v) actions of a similar nature.

(B) The term "routine governmental action" does not include any decision by a foreign official whether, or on what terms, to award new business to or to continue business with a particular party, or any action taken by a foreign official involved in the decision-making process to encourage a decision to award new business to or continue business with a particular party.

(5) The term "interstate commerce" means trade, commerce, transportation, or communication among the several States, or between any foreign country and any State or between any State and any place or ship outside thereof, and such term includes the intrastate use of—

(A) a telephone or other interstate means of communication, or

(B) any other interstate instrumentality.

* * *

15 U.S.C. § 78m [Section 13 of the Securities Exchange Act of 1934]

Periodical and other reports

(a) Reports by issuer of security; contents

Every issuer of a security registered pursuant to section 78l of this title shall file with the Commission, in accordance with such rules and regulations as the Commission may prescribe as necessary or appropriate for the proper protection of investors and to insure fair dealing in the security—

(1) such information and documents (and such copies thereof) as the Commission shall require to keep reasonably current the information and documents required to be included in or filed with an application or registration statement filed pursuant to section 78l of this title, except that the Commission may not require the filing of any material contract wholly executed before July 1, 1962.

(2) such annual reports (and such copies thereof), certified if required by the rules and regulations of the Commission by independent public accountants, and such quarterly reports (and such copies thereof), as the Commission may prescribe.

Every issuer of a security registered on a national securities exchange shall also file a duplicate original of such information, documents, and reports with the exchange. In any registration statement, periodic report, or other reports to be filed with the Commission, an emerging growth company need not present selected financial data in accordance with section 229.301 of title 17, Code of Federal Regulations, for any period prior to the earliest audited period presented in connection with its first registration statement that became effective under this chapter or the Securities Act of 1933 [15 U.S.C. §§ 77a, et seq.] and, with respect to any such statement or reports, an emerging growth company may not be required to comply with any new or revised financial accounting standard until such date that a company that is not an issuer (as defined under section 7201 of this title) is required to comply with such new or revised accounting standard, if such standard applies to companies that are not issuers.

(b) Form of report; books, records, and internal accounting; directives

(1) The Commission may prescribe, in regard to reports made pursuant to this chapter, the form or forms in which the required information shall be set forth, the items or details to be shown in the balance sheet and the earnings statement, and the methods to be followed in the preparation of reports, in the appraisal or valuation of assets and liabilities, in the determination of depreciation and depletion, in the differentiation of recurring and nonrecurring income, in the differentiation of investment and operating income, and in the preparation, where the Commission deems it necessary or desirable, of separate and/or consolidated balance sheets or income accounts of any person directly or indirectly controlling or controlled by the issuer, or any person under direct or indirect common control with the issuer; but in the case of the reports of any person whose methods of accounting are prescribed under the provisions of any law of the United States, or any rule or regulation thereunder, the rules and regulations of the Commission with respect to reports shall not be inconsistent with the requirements imposed by such law or rule or regulation in respect of the same subject matter (except that such rules and regulations of the Commission may be inconsistent with such requirements to the extent that the Commission determines that the public interest or the protection of investors so requires).

(2) Every issuer which has a class of securities registered pursuant to section 78l of this title and every issuer which is required to file reports pursuant to section 78o(d) of this title shall—

(A) make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer;

(B) devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that—

(i) transactions are executed in accordance with management's general or specific authorization;

(ii) transactions are recorded as necessary (I) to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and (II) to maintain accountability for assets;

(iii) access to assets is permitted only in accordance with management's general or specific authorization; and

(iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences; and

(C) notwithstanding any other provision of law, pay the allocable share of such issuer of a reasonable annual accounting support fee or fees, determined in accordance with section 7219 of this title.

(3)(A) With respect to matters concerning the national security of the United States, no duty or liability under paragraph (2) of this subsection shall be imposed upon any person acting in cooperation with the head of any Federal department or agency responsible for such matters if such act in cooperation with such head of a department or agency was done upon the specific, written directive of the head of such department or agency pursuant to Presidential authority to issue such directives. Each directive issued under this paragraph shall set forth the specific facts and circumstances with respect to which the provisions of this paragraph are to be invoked. Each such directive shall, unless renewed in writing, expire one year after the date of issuance.

(B) Each head of a Federal department or agency of the United States who issues such a directive pursuant to this paragraph shall maintain a complete file of all such directives and shall, on October 1 of each year, transmit a summary of matters covered by such directives in force at any time during the previous year to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate.

(4) No criminal liability shall be imposed for failing to comply with the requirements of paragraph (2) of this subsection except as provided in paragraph (5) of this subsection.

(5) No person shall knowingly circumvent or knowingly fail to implement a system of internal accounting controls or knowingly falsify any book, record, or account described in paragraph (2).

(6) Where an issuer which has a class of securities registered pursuant to section 78l of this title or an issuer which is required to file reports pursuant to section 78o(d) of this title holds 50 per centum or less of the voting power with respect to a domestic or foreign firm, the provisions of paragraph (2) require only that the issuer proceed in good faith to use its influence, to the extent reasonable under the issuer's circumstances, to cause such domestic or foreign firm to devise and maintain a system of internal accounting controls consistent with paragraph (2). Such circumstances include the relative degree of the issuer's ownership of the domestic or foreign firm and the laws and practices governing the business operations of the country in which such firm is located. An issuer which demonstrates good faith efforts to use such influence shall be conclusively presumed to have complied with the requirements of paragraph (2).

(7) For the purpose of paragraph (2) of this subsection, the terms "reasonable assurances" and "reasonable detail" mean such level of detail and degree of assurance as would satisfy prudent officials in the conduct of their own affairs.

* * *

15 U.S.C. § 78ff Penalties [Section 32 of the Securities Exchange Act of 1934]

(a) Willful violations; false and misleading statements

Any person who willfully violates any provision of this chapter (other than section 78dd-1 of this title [Section 30A of the Exchange Act]), or any rule or regulation thereunder the violation of which is made unlawful or the observance of which is required under the terms of this chapter, or any person who willfully and knowingly makes, or causes to be made, any statement in any application, report, or document required to be filed under this chapter or any rule or regulation thereunder or any undertaking contained in a registration statement as provided in subsection (d) of section 78o of this title, or by any self-regulatory organization in connection with an application for membership or participation therein or to become associated with a member thereof, which statement was false or misleading with respect to any material fact, shall upon conviction be fined not more than $5,000,000, or imprisoned not more than 20 years, or both, except that when such person is a person other than a natural person, a fine not exceeding $25,000,000 may be imposed; but no person shall be subject to imprisonment under this section for the violation of any rule or regulation if he proves that he had no knowledge of such rule or regulation.

(b) Failure to file information, documents, or reports

Any issuer which fails to file information, documents, or reports required to be filed under subsection (d) of section 78o of this title or any rule or regulation thereunder shall forfeit to the United States the sum of $100 for each and every day such failure to file shall continue. Such forfeiture, which shall be in lieu of any criminal penalty for such failure to file which might be deemed to arise under subsection (a) of this section, shall be payable into the Treasury of the United States and shall be recoverable in a civil suit in the name of the United States.

(c) Violations by issuers, officers, directors, stockholders, employees, or agents of issuers

(1)(A) Any issuer that violates subsection (a) or (g) of section 78dd-1 [Section 30A of the Exchange Act] of this title shall be fined not more than $2,000,000.

(B) Any issuer that violates subsection (a) or (g) of section 78dd-1

[Section 30A of the Exchange Act]of this title shall be subject to a civil penalty of not more than $10,000 imposed in an action brought by the Commission.

(2)(A) Any officer, director, employee, or agent of an issuer, or stockholder acting on behalf of such issuer, who willfully violates subsection (a) or (g) of section 78dd-1 [Section 30A of the Exchange Act] of this title shall be fined not more than $100,000, or imprisoned not more than 5 years, or both.

(B) Any officer, director, employee, or agent of an issuer, or stockholder acting on behalf of such issuer, who violates subsection (a) or (g) of section 78dd-1 [Section 30A of the Exchange Act] of this title shall be subject to a civil penalty of not more than $10,000 imposed in an action brought by the Commission.

(3) Whenever a fine is imposed under paragraph (2) upon any officer, director, employee, agent, or stockholder of an issuer, such fine may not be paid, directly or indirectly, by such issuer.

ENDNOTES

[1] S. Rep. No. 95-114, at 4 (1977) [hereinafter S. Rep. No. 95-114], *available at* http://www.justice.gov/criminal/fraud/fcpa/history/1977/senaterpt-95-114.pdf.

[2] *Id.*; H.R. Rep. No. 95-640, at 4-5 (1977) [hereinafter H. R. Rep. No. 95-640], *available at* http://www.justice.gov/criminal/fraud/fcpa/history/1977/houseprt-95-640.pdf. The House Report made clear Congress's concerns:

> The payment of bribes to influence the acts or decisions of foreign officials, foreign political parties or candidates for foreign political office is unethical. It is counter to the moral expectations and values of the American public. But not only is it unethical, it is bad business as well. It erodes public confidence in the integrity of the free market system. It short-circuits the marketplace by directing business to those companies too inefficient to compete in terms of price, quality or service, or too lazy to engage in honest salesmanship, or too intent upon unloading marginal products. In short, it rewards corruption instead of efficiency and puts pressure on ethical enterprises to lower their standards or risk losing business.

Id.

[3] *See, e.g.*, U.S. Agency for Int'l Dev., USAID Anticorruption Strategy 5-6 (2005), *available at* http://transition.usaid.gov/policy/ads/200/200mbo.pdf. The growing recognition that corruption poses a severe threat to domestic and international security has galvanized efforts to combat it in the United States and abroad. *See, e.g.*, Int'l Anti-Corruption and Good Governance Act of 2000, Pub. L. No. 106-309, § 202, 114 Stat. 1090 (codified as amended at 22 U.S.C. §§ 2151-2152 (2000)) (noting that "[w]idespread corruption endangers the stability and security of societies, undermines democracy, and jeopardizes the social, political, and economic development of a society. . . . [and that] [c]orruption facilitates criminal activities, such as money laundering, hinders economic development, inflates the costs of doing business, and undermines the legitimacy of the government and public trust").

[4] *See* Maryse Tremblay & Camille Karbassi, *Corruption and Human Trafficking* 4 (Transparency Int'l, Working Paper No. 3, 2011), *available at* http://issuu.com/transparencyinternational/docs/ti-working_paper_human_trafficking_28_jun_2011; U.S. Agency for Int'l Dev., Foreign Aid in the National Interest 40 (2002), *available at* http://pdf.usaid.gov/pdf_docs/PDABW900.pdf ("No problem does more to alienate citizens from their political leaders and institutions, and to undermine political stability and economic development, than endemic corruption among the government, political party leaders, judges, and bureaucrats. The more endemic the corruption is, the more likely it is to be accompanied by other serious deficiencies in the rule of law: smuggling, drug trafficking, criminal violence, human rights abuses, and personalization of power.").

[5] President George W. Bush observed in 2006 that "the culture of corruption has undercut development and good governance and . . . . impedes our efforts to promote freedom and democracy, end poverty, and combat international crime and terrorism." President's Statement on Kleptocracy, 2 Pub. Papers 1504 (Aug. 10, 2006), *available at* http://georgewbush-whitehouse.archives.gov/news/releases/2006/08/20060810.html. The administrations of former President George W. Bush and President Barack Obama both recognized the threats posed to security and stability by corruption. For instance, in issuing a proclamation restricting the entry of certain corrupt foreign public officials, former President George W. Bush recognized "the serious negative effects that corruption of public institutions has on the United States' efforts to promote security and to strengthen democratic institutions and free market systems. . . ." Proclamation No. 7750, 69 Fed. Reg. 2287 (Jan. 14, 2004). Similarly, President Barack Obama's National Security Strategy paper, released in May 2010, expressed the administration's efforts and commitment to promote the recognition that "pervasive corruption is a violation of basic human rights and a severe impediment to development and global security." The White House, National Security Strategy 38 (2010), *available at* http://www.whitehouse.gov/sites/default/files/rss_viewer/national_security_strategy.pdf.

[6] *See, e.g.*, Int'l Chamber of Commerce, et al., Clean Business Is Good Business: The Business Case Against Corruption (2008), *available at* http://www.unglobalcompact.org/docs/news_events/8.1/clean_business_is_good_business.pdf; World Health Org., *Fact Sheet No. 335, Medicines: Corruption and Pharmaceuticals* (Dec. 2009), *available at* http://www.who.int/mediacentre/factsheets/fs335/en/; Daniel Kaufmann, *Corruption: The Facts*, Foreign Pol'y, Summer 1997, at 119-20; Paolo Mauro, *Corruption and Growth*, 110 Q. J. Econ. 681, 683, 705 (1995) (finding that "corruption lowers private investment . . . [and] reduc[es] economic growth . . ."); The World Bank, The Data Revolution: Measuring Governance and Corruption, (Apr. 8, 2004), *available at* http://go.worldbank.org/87JUY8GJH0.

[7] *See, e.g.*, *The Corruption Eruption*, Economist (Apr. 29, 2010), *available at* http://www.economist.com/node/16005114 ("The hidden costs of corruption are almost always much higher than companies imagine. Corruption inevitably begets ever more corruption: bribe-takers keep returning to the trough and bribe-givers open themselves up to blackmail."); Daniel Kaufmann and Shang-Jin Wei, *Does "Grease Money" Speed Up the Wheels of Commerce?* 2 (Nat'l Bureau of Econ. Research, Working Paper No. 7093, 1999), *available at* http://www.nber.org/papers/w7093.pdf ("Contrary to the 'efficient grease' theory, we find

that firms that pay more bribes are also likely to spend more, not less, management time with bureaucrats negotiating regulations, and face higher, not lower, cost of capital.").

[8] For example, in a number of recent enforcement actions, the same employees who were directing or controlling the bribe payments were also enriching themselves at the expense of the company. *See, e.g.*, Complaint, SEC v. Peterson, No. 12-cv-2033 (E.D.N.Y. 2012), ECF No. 1, *available at* http://www.sec.gov/litigation/complaints/2012/comp-pr2012-78.pdf; Criminal Information, United States v. Peterson, No. 12-cr-224 (E.D.N.Y. 2012), ECF No. 7 [hereinafter *United States v. Peterson*], *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/petersong/petersong-information.pdf; Plea Agreement, United States v. Stanley, No. 08-cr-597 (S.D. Tex. 2008), ECF No. 9 [hereinafter *United States v. Stanley*], *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/stanleya/09-03-08stanley-plea-agree.pdf; Plea Agreement, United States v. Sapsizian, No. 06-cr-20797 (S.D. Fla. 2007), ECF No. 42 [hereinafter *United States v. Sapsizian*], *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/sapsizianc/06-06-07sapsizian-plea.pdf.

[9] *See, e.g.,* Complaint, SEC v. Tyco Int'l Ltd., 06-cv-2942 (S.D.N.Y. 2006), ECF No. 1 [hereinafter *SEC v. Tyco Int'l*], *available at* http://www.sec.gov/litigation/complaints/2006/comp19657.pdf; Complaint, SEC v. Willbros Group, Inc., No. 08-cv-1494 (S.D. Tex. 2008), ECF No. 1 [hereinafter *SEC v. Willbros*], *available at* http://www.sec.gov/litigation/complaints/2008/comp20571.pdf.

[10] *See* Plea Agreement, United States v. Bridgestone Corp., No. 11-cr-651 (S.D. Tex. 2011), ECF No. 21, *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/bridgestone/10-05-11bridgestone-plea.pdf.

[11] *See* S. Rep. No. 95-114, at 6; H.R. Rep. 95-640, at 4*; see also* A. Carl Kotchian, *The Payoff: Lockheed's 70-Day Mission to Tokyo*, Saturday Rev., Jul. 9, 1977, at 7.

[12] U.S. Sec. and Exchange Comm., Report of the Securities and Exchange Commission on Questionable and Illegal Corporate Payments and Practices 2-3 (1976).

[13] *See* H.R. Rep. No. 95-640, at 4-5; S. Rep. No. 95-114, at 3-4.

[14] H.R. Rep. No. 95-640, at 4-5; S. Rep. No. 95-114, at 4. The Senate Report observed, for instance, that "[m]anagements which resort to corporate bribery and the falsification of records to enhance their business reveal a lack of confidence about themselves," while citing the Secretary of the Treasury's testimony that "'[p]aying bribes—apart from being morally repugnant and illegal in most countries—is simply not necessary for the successful conduct of business here or overseas.'" *Id.*

[15] *See* S. Rep. No. 100-85, at 46 (1987) (recounting FCPA's historical background and explaining that "a strong antibribery statute could help U.S. corporations resist corrupt demands . . . .") [hereinafter S. Rep. No. 100-85].

[16] S. Rep. No. 95-114, at 7.

[17] Omnibus Trade and Competitiveness Act of 1988, Pub. L. No. 100-418, § 5003, 102 Stat. 1107, 1415-25 (1988); *see also* H.R. Rep. No. 100-576, at 916-24 (1988) (discussing FCPA amendments, including changes to standard of liability for acts of third parties) [hereinafter H.R. Rep. No. 100-576].

[18] *See* Omnibus Trade and Competitiveness Act of 1988, § 5003(d). The amended statute included the following directive:

> It is the sense of the Congress that the President should pursue the negotiation of an international agreement, among the members of the Organization of Economic Cooperation and Development, to govern persons from those countries concerning acts prohibited with respect to issuers and domestic concerns by the amendments made by this section. Such international agreement should include a process by which problems and conflicts associated with such acts could be resolved.

Id.; *see also* S. Rep. No. 105-277, at 2 (1998) (describing efforts by Executive Branch to encourage U.S. trading partners to enact legislation similar to FCPA following 1988 amendments) [hereinafter S. Rep. No. 105-277].

[19] Convention on Combating Bribery of Foreign Public Officials in International Business Transactions art. 1.1, Dec. 18, 1997, 37 I.L.M. 1 [hereinafter Anti-Bribery Convention]. The Anti-Bribery Convention requires member countries to make it a criminal offense "for any person intentionally to offer, promise or give any undue pecuniary or other advantage, whether directly or through intermediaries, to a foreign public official, for that official or for a third party, in order that the official act or refrain from acting in relation to the performance of official duties, in order to obtain or retain business or other improper advantage in the conduct of international business." The Convention and its commentaries also call on all parties (a) to ensure that aiding and abetting and authorization of an act of bribery are criminal offenses, (b) to assert territorial jurisdiction "broadly so that an extensive physical connection to the bribery act is not required," and (c) to assert nationality jurisdiction consistent with the general principles and conditions of each party's legal system. *Id.* at art. 1.2, cmts. 25, 26.

[20] *See* International Anti-Bribery and Fair Competition Act of 1998, Pub. L. 105-366, 112 Stat. 3302 (1998); *see also* S. Rep. No. 105-277, at 2-3 (describing amendments to "the FCPA to conform it to the requirements of and to implement the OECD Convention").

[21] There is no private right of action under the FCPA. *See, e.g.*, Lamb v. Phillip Morris, Inc., 915 F.2d 1024, 1028-29 (6th Cir. 1990); McLean v. Int'l Harvester Co., 817 F.2d 1214, 1219 (5th Cir. 1987).

[22] U.S. Dept. of Justice, U.S. Attorneys' Manual § 9-47.110 (2008) [hereinafter USAM], *available at* http://www.justice.gov/usao/eousa/foia_reading_room/usam/.

[23] Go to http://export.gov/worldwide_us/index.asp for more information.

[24] Additional information about publicly available market research and due diligence assistance is available online. *See* In'l Trade Admin., *Market Research and Due Diligence*, *available at* http://export.gov/salesandmarketing/eg_main_018204.asp. The International Company Profile reports include a listing of the potential partner's key officers and senior management; banking relationships and other financial information about the company; and market information, including sales and profit figures and potential liabilities. They are not, however, intended to substitute for a company's own due diligence, and the Commercial Service does not offer ICP in countries where Dun & Bradstreet or other private sector vendors are already performing this service. *See* In'l Trade Admin., *International Company Profile*, *available at* http://export.gov/salesandmarketing/eg_main_018198.asp.

[25] The Commercial Services' domestic and foreign offices can also be found at http://export.gov/usoffices/index.asp and http://export.gov/worldwide_us/index.asp.

[26] This form can be located at http://tcc.export.gov/Report_a_Barrier/index.asp.

[27] *See* In'l Trade Admin., "Doing Business In" Guides, *available at* http://export.gov/about/eg_main_016806.asp.

[28] The Business Ethics Manual is available at http://www.ita.doc.gov/goodgovernance/business_ethics/manual.asp.

[29] Information about the Advocacy Center can be found at http://export.gov/advocacy.

[30] Reports on U.S. compliance with these treaties can be found at http://www.justice.gov/criminal/fraud/fcpa/intlagree/.

[31] *See* Statement on Signing the International Anti-Bribery and Fair Competition Act of 1998, 34 Weekly Comp. Pres. Doc. 2290, 2291 (Nov. 10, 1998) ("U.S. companies have had to compete on an uneven playing field . . . . The OECD Convention . . . is designed to change all that. Under the Convention, our major competitors will be obligated to criminalize the bribery of foreign public officials in international business transactions.").

[32] Colombia is also a member of the Working Group and is expected to accede to the Anti-Bribery Convention.

[33] OECD, *Country Monitoring of the OECD Anti-Bribery Convention*, *available at* http://www.oecd.org/document/12/0,3746,en_2649_34859_35692940_1_1_1_1,00.html.

[34] OECD, *Phase 3 Country Monitoring of the OECD Anti-Bribery Convention*, *available at* http://www.oecd.org/document/31/0,3746,en_2649_34859_44684959_1_1_1_1,00.html.

[35] OECD, *Country Reports on the Implementation of the OECD Anti-Bribery Convention*, *available at* http://www.oecd.org/document/24/0,3746,en_2649_34859_1933144_1_1_1_1,00.html.

[36] The OECD Phase 1, 2, and 3 reports on the United States, as well as the U.S. responses to questionnaires, are available at http://www.justice.gov/criminal/fraud/fcpa/intlagree.

[37] *See* OECD Working Group on Bribery, *United States: Phase 3, Report on the Application of the Convention on Combating Bribery of Foreign*

Public Officials in International Business Transactions and the 2009 Revised Recommendation on Combating Bribery in International Business Transactions, Oct. 2010, at 61-62 (recommending that the United States "[c]onsolidate and summarise publicly available information on the application of the FCPA in relevant sources"), *available at* http://www.oecd.org/dataoecd/10/49/46213841.pdf.

[38] United Nations Convention Against Corruption, Oct. 31, 2003, S. Treaty Doc. No. 109-6, 2349 U.N.T.S. 41, *available at* http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf [hereinafter UNCAC].

[39] For more information about the UNCAC review mechanism, see *Mechanism for the Review of Implementation of the United Nations Convention Against Corruption*, United Nations Office on Drugs and Crime, *available at* http://www.unodc.org/documents/treaties/UNCAC/Publications/ReviewMechanism-BasicDocuments/Mechanism_for_the_Review_of_Implementation_-_Basic_Documents_-_E.pdf.

[40] For information about the status of UNCAC, see United Nations Office on Drugs and Crime, *UNCAC Signature and Ratification Status as of 12 July 2012*, *available at* http://www.unodc.org/unodc/en/treaties/CAC/signatories.html.

[41] Organization of American States, Inter-American Convention Against Corruption, Mar. 29, 1996, 35 I.L.M. 724, *available at* http://www.oas.org/juridico/english/treaties/b-58.html. For additional information about the status of the IACAC, see Organization of American States, Signatories and Ratifications, *available at* http://www.oas.org/juridico/english/Sigs/b-58.html.

[42] Council of Europe, Criminal Law Convention on Corruption, Jan. 27, 1999, 38 I.L.M. 505, *available at* http://conventions.coe.int/Treaty/en/Treaties/html/173.htm.

[43] For additional information about GRECO, see Council of Europe, *Group of States Against Corruption*, *available at* http://www.coe.int/t/dghl/monitoring/greco/default_EN.asp. The United States has not yet ratified the GRECO convention.

[44] The text of the FCPA statute is set forth in the appendix. *See also* Jury Instructions at 21-27, United States v. Esquenazi, No. 09-cr-21010 (S.D. Fla. Aug. 5, 2011), ECF No. 520 [hereinafter *United States v. Esquenazi*] (FCPA jury instructions); Jury Instructions at 14-25, United States v. Kay, No. 01-cr-914 (S.D. Tex. Oct. 6, 2004), ECF No. 142 (same), *aff'd*, 513 F.3d 432, 446-52 (5th Cir. 2007), *reh'g denied*, 513 F.3d 461 (5th Cir. 2008) [hereinafter *United States v. Kay*]; Jury Instructions at 76-87, United States v. Jefferson, No. 07-cr-209 (E.D. Va. July 30, 2009), ECF No. 684 [hereinafter *United States v. Jefferson*] (same); Jury Instructions at 8-10, United States v. Green, No. 08-cr-59 (C.D. Cal. Sept. 11, 2009), ECF No. 288 [hereinafter *United States v. Green*] (same); Jury Instructions at 23-29, United States v. Bourke, No. 05-cr-518 (S.D.N.Y. July 2009) [hereinafter *United States v. Bourke*] (same, not docketed); Jury Instructions at 2-8, United States v. Mead, No. 98-cr-240 (D.N.J. Oct. 1998) [hereinafter *United States v. Mead*] (same).

[45] The provisions of the FCPA applying to issuers are part of the Securities Exchange Act of 1934 [hereinafter Exchange Act]. The anti-bribery provisions can be found at Section 30A of the Exchange Act, 15 U.S.C. § 78dd-1.

[46] 15 U.S.C. § 78*l*.

[47] 15 U.S.C. § 78*o*(d).

[48] SEC enforcement actions have involved a number of foreign issuers. *See*, *e.g.*, Complaint, SEC v. Magyar Telekom Plc., *et al.*, No. 11-cv-9646 (S.D.N.Y. Dec. 29, 2011), ECF No. 1 (German and Hungarian companies), *available at* http://www.sec.gov/litigation/complaints/2011/comp22213-co.pdf; Complaint, SEC v. Alcatel-Lucent, S.A., No. 10-cv-24620 (S.D. Fla. Dec. 27, 2010), ECF No. 1 [hereinafter *SEC v. Alcatel-Lucent*] (French company), *available at* http://www.sec.gov/litigation/complaints/2010/comp21795.pdf; Complaint, SEC v. ABB, Ltd., No. 10-cv-1648 (D.D.C. Sept. 29, 2010), ECF No. 1 [hereinafter *SEC v. ABB*] (Swiss company), *available at* http://www.sec.gov/litigation/complaints/2010/comp-pr2010-175.pdf; Complaint, SEC v. Daimler AG, No. 10-cv-473 (D.D.C. Apr. 1, 2010), ECF No. 1 [hereinafter *SEC v. Daimler AG*] (German company), *available at* http://sec.gov/litigation/complaints/2010/comp-pr2010-51.pdf; Complaint, SEC v. Siemens Aktiengesellschaft, No. 08-cv-2167 (D.D.C. Dec. 12, 2008), ECF No. 1 [hereinafter *SEC v. Siemens AG*] (Germany company), *available at* http://www.sec.gov/litigation/complaints/2008/comp20829.pdf. Certain DOJ enforcement actions have likewise involved foreign issuers. *See, e.g.*, Criminal Information, United States v. Magyar Telekom, Plc., No. 11-cr-597 (E.D. Va. Dec. 29, 2011), ECF No. 1, *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/magyar-telekom/2011-12-29-information-magyar-telekom.pdf; Non-Pros. Agreement, In re Deutsche Telekom AG (Dec. 29, 2011), *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/deutsche-telekom/2011-12-29-deustche-telekom-npa.pdf; Criminal Information, United States v. Alcatel-Lucent, S.A., No. 10-cr-20907 (S.D. Fla. Dec. 27, 2010), ECF No. 1 [hereinafter *United States v. Alcatel-Lucent, S.A.*], *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/alcatel-etal/12-27-10alcatel-et-al-info.pdf; Criminal Information, United States v. Daimler AG, No. 10-cr-63 (D.D.C. Mar. 22, 2010), ECF No. 1 [hereinafter *United States v. Daimler AG*], *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/daimler/03-22-10daimlerag-info.pdf; Criminal Information, United States v. Siemens Aktiengesellschaft, No. 08-cr-367 (D.D.C. Dec. 12, 2008), ECF No. 1 [hereinafter *United States v. Siemens AG*], *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/siemens/12-12-08siemensakt-info.pdf.

[49] *See* http://www.sec.gov/divisions/corpfin/internatl/companies.shtml.

[50] *See, e.g.*, Complaint, SEC v. Turner, *et al.*, No. 10-cv-1309 (D.D.C. Aug. 4, 2010), ECF No. 1 [hereinafter, *SEC v. Turner*] (charging a Lebansese/Canadian agent of a UK company listed on U.S. exchange with violating the FCPA for bribes of Iraqi officials), *available at* http://www.sec.gov/litigation/complaints/2010/comp21615.pdf; Indictment, United States v. Naaman, No. 08-cr-246 (D.D.C. Aug. 7, 2008), ECF No. 3 [hereinafter *United States v. Naaman*] (same), *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/naamano/08-07-08naaman-indict.pdf; Complaint, SEC v. Elkin, *et al.*, No. 10-cv-661 (D.D.C. Apr. 28, 2010), ECF No. 1 [hereinafter *SEC v. Elkin*] (charging an employee of U.S. publicly traded company with violating FCPA for bribery of officials in Kyrgyzstan), *available at* http://www.sec.gov/litigation/complaints/2010/comp21509.pdf; Criminal Information, United States v. Elkin, No. 10-cr-15 (W.D. Va. Aug. 3, 2010), ECF No. 8 [hereinafter *United States v. Elkin*] (same), *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/elkin/08-03-10elkin-information.pdf; Indictment, United States v. Tesler, *et al.*, No. 09-cr-98 (S.D. Tex. Feb. 17, 2009), ECF No. 1 [hereinafter *United States v. Tesler*] (charging a British agent of U.S. publicly traded company with violating the FCPA for bribery of Nigerian officials), *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/tesler/tesler-indict.pdf; Superseding Indictment, *United States v. Sapsizian*, et al., *supra* note 8, ECF 32 (charging a French employee of French company traded on a U.S. exchange with violating the FCPA).

[51] 15 U.S.C. § 78dd-2.

[52] 15 U.S.C. § 78dd-2(h)(1).

[53] 15 U.S.C. § 78dd-2(a). *See, e.g.*, Superseding Indictment, United States v. Nexus Technologies, *et al.*, No. 08-cr-522 (E.D. Pa. Oct. 28, 2009), ECF No. 106 [hereinafter *United States v. Nexus Technologies*] (private U.S. company and corporate executives charged with violating FCPA for bribes paid in Vietnam), *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/nguyenn/09-04-08nguyen-indict.pdf; Indictment, *United States v. Esquenazi*, *supra* note 44, (private U.S. company and corporate executives charged with FCPA violations for bribes paid in Haiti), *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/esquenazij/12-08-09esquenazi-indict.pdf.

[54] 15 U.S.C. § 78dd-3(a). As discussed above, foreign companies that have securities registered in the United States or that are required to file periodic reports with the SEC, including certain foreign companies with American Depository Receipts, are covered by the FCPA's anti-bribery provisions governing "issuers" under 15 U.S.C. § 78dd-1.

[55] *See* International Anti-Bribery and Fair Competition Act of 1998, Pub. L. 105-366, 112 Stat. 3302 (1998); 15 U.S.C. § 78dd-3(a); *see also* U.S. Dept. of Justice, Criminal Resource Manual § 9-1018 (Nov. 2000) (the Department "interprets [Section 78dd-3(a)] as conferring jurisdiction whenever a foreign company or national *causes* an act to be done within the territory of the United States by any person acting as that company's or national's agent."). This interpretation is consistent with U.S. treaty obligations. *See* S. Rep. No. 105-2177 (1998) (expressing Congress' intention that the 1998 amendments to the FCPA "conform it to the requirements of and to implement the OECD Convention."); Anti-Bribery Convention at art. 4.1, *supra* note 19 ("Each Party shall take such measures as may be necessary to establish its jurisdiction over the bribery of a foreign public official when the offence is committed in whole or in part in its territory.").

[56] 15 U.S.C. § 78dd-3(a); *see, e.g.*, Criminal Information, United States v. Alcatel-Lucent France, S.A., *et al.*, No. 10-cr-20906 (S.D. Fla. Dec. 27, 2010), ECF No. 1 [hereinafter *United States v. Alcatel-Lucent France*] (subsidiary of French publicly traded company convicted of conspiracy to violate FCPA), *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/alcatel-lucent-sa-etal/12-27-10alcatel-et-al-info.pdf; Criminal Information, United States v. DaimlerChrysler Automotive Russia SAO, No. 10-cr-64 (D.D.C. Mar. 22, 2010), ECF No. 1 (subsidiary of German publicly traded company convicted of violating FCPA), *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/daimler/03-22-10daimlerrussia-info.pdf; Criminal Information, United States v. Siemens S.A. (Argentina), No. 08-cr-368 (D.D.C. Dec. 12, 2008), ECF No. 1 (subsidiary of German publicly traded company convicted of violating FCPA), *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/siemens/12-12-08siemensargen-info.pdf.

[57] *See* 15 U.S.C. §§ 78dd-2(h)(5) (defining "interstate commerce"), 78dd-3(f)(5) (same); *see also* 15 U.S.C. §78c(a)(17).

[58] 15 U.S.C. §§ 78dd-2(h)(5), 78dd-3(f)(5).

[59] *See* 15 U.S.C. § 78dd-3.

[60] Criminal Information, United States v. JGC Corp., No. 11-cr-260 (S.D. Tex. Apr. 6, 2011), ECF No. 1 [hereinafter *United States v. JGC Corp.*], *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/jgc-corp/04-6-11jgc-corp-info.pdf; Criminal Information, United States v. Snamprogetti Netherlands B.V., No. 10-cr-460 (S.D. Tex. Jul. 7, 2010), ECF No. 1 [hereinafter *United States v. Snamprogetti*], *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/snamprogetti/07-07-10snamprogetti-info.pdf.

[61] *See* 15 U.S.C. §§ 78dd-1(g) ("irrespective of whether such issuer or such officer, director, employee, agent, or stockholder makes use of the mails or any means or instrumentality of interstate commerce in furtherance of such offer, gift, payment, promise, or authorization"), 78dd-2(i)(1) ("irrespective of whether such United States person makes use of the mails or any means or instrumentality of interstate commerce in furtherance of such offer, gift, payment, promise, or authorization").

[62] S. Rep. No. 105-277 at 2 ("[T]he OECD Convention calls on parties to assert nationality jurisdiction when consistent with national legal and constitutional principles. Accordingly, the Act amends the FCPA to provide for jurisdiction over the acts of U.S. businesses and nationals in furtherance of unlawful payments that take place wholly outside the United States. This exercise of jurisdiction over U.S. businesses and nationals for unlawful conduct abroad is consistent with U.S. legal and constitutional principles and is essential to protect U.S. interests abroad.").

[63] *Id*. at 2-3.

[64] 15 U.S.C. §§ 78dd-1(a), 78dd-2(a), 78dd-3(a).

[65] *See* H.R. Rep. No. 95-831, at 12 (referring to "business purpose" test).

[66] *See, e.g.*, Complaint, *SEC v. Siemens AG*, *supra* note 48; Criminal Information, *United States v. Siemens AG*, *supra* note 48.

[67] In amending the FCPA in 1988, Congress made clear that the business purpose element, and specifically the "retaining business" prong, was meant to be interpreted broadly:

> The Conferees wish to make clear that the reference to corrupt payments for "retaining business" in present law is not limited to the renewal of contracts or other business, but also includes a prohibition against corrupt payments related to the execution or performance of contracts or the carrying out of existing business, such as a payment to a foreign official for the purpose of obtaining more favorable tax treatment. The term should not, however, be construed so broadly as to include lobbying or other normal representations to government officials.

H.R. Rep. No. 100-576, at 1951-52 (internal citations omitted).

[68] *See, e.g.*, Complaint, SEC v. Panalpina, Inc., No. 10-cv-4334 (S.D. Tex. Nov. 4, 2010), ECF No. 1 [hereinafter *SEC v. Panalpina, Inc.*], *available at* http://www.sec.gov/litigation/complaints/2010/comp21727.pdf; Criminal Information, United States v. Panalpina, Inc., No. 10-cr-765 (S.D. Tex. Nov. 4, 2010), ECF No. 1 [hereinafter *United States v. Panalpina, Inc.*], *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/panalpina-inc/11-04-10panalpina-info.pdf; Criminal Information, United States v. Panalpina World Transport (Holding) Ltd., No. 10-cr-769 (S.D. Tex. Nov. 4, 2010), ECF No. 1, *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/panalpina-world/11-04-10panalpina-world-info.pdf; *see also* Press Release, U.S. Sec. and Exchange Comm., SEC Charges Seven Oil Services and Freight Forwarding Companies for Widespread Bribery of Customs Officials (Nov. 4, 2010) ("The SEC alleges that the companies bribed customs officials in more than 10 countries in exchange for such perks as avoiding applicable customs duties on imported goods, expediting the importation of goods and equipment, extending drilling contracts, and lowering tax assessments."), *available at* http://www.sec.gov/news/press/2010/2010-214.htm; Press Release, U.S. Dept. of Justice, Oil Services Companies and a Freight Forwarding Company Agree to Resolve Foreign Bribery Investigations and to Pay More Than $156 Million in Criminal Penalties (Nov. 4, 2010) (logistics provider and its subsidiary engaged in scheme to pay thousands of bribes totaling at least $27 million to numerous foreign officials on behalf of customers in oil and gas industry "to circumvent local rules and regulations relating to the import of goods and materials into numerous foreign jurisdictions"), *available at* http://www.justice.gov/opa/pr/2010/November/10-crm-1251.html.

[69] United States v. Kay, 359 F.3d 738, 755-56 (5th Cir. 2004).

[70] *Id*. at 749. Indeed, the *Kay* court found that Congress' explicit exclusion of facilitation payments from the scope of the FCPA was evidence that "Congress intended for the FCPA to prohibit *all other* illicit payments that are intended to influence non-trivial official foreign action in an effort to aid in obtaining or retaining business for some person." *Id*. at 749-50 (emphasis added).

[71] *Id*. at 750.

[72] *Id*. at 749-55.

[73] *Id*. at 756 ("It still must be shown that the bribery was intended to produce an effect—here, through tax savings—that would 'assist in obtaining or retaining business.'").

[74] The FCPA does not explicitly define "corruptly," but in drafting the statute Congress adopted the meaning ascribed to the same term in the domestic bribery statute, 18 U.S.C. § 201(b). *See* H.R. Rep. No. 95-640, at 7.

[75] The House Report states in full:

> The word "corruptly" is used in order to make clear that the offer, payment, promise, or gift, must be intended to induce the recipient to misuse his official position; for example, wrongfully to direct business to the payor or his client, to obtain preferential legislation or regulations, or to induce a foreign official to fail to perform an official function. The word "corruptly" connotes an evil motive or purpose such as that required under 18 U.S.C. 201(b) which prohibits domestic bribery. As in 18 U.S.C. 201(b), the word "corruptly" indicates an intent or desire wrongfully to influence the recipient. It does not require that the act [be] fully consummated or succeed in producing the desired outcome.

Id. The Senate Report provides a nearly identical explanation of the meaning of the term:

> The word "corruptly" is used in order to make clear that the offer, payment, promise, or gift, must be intended to induce the recipient to misuse his official position in order to wrongfully direct business to the payor or his client, or to obtain

> preferential legislation or a favorable regulation. The word "corruptly" connotes an evil motive or purpose, an intent to wrongfully influence the recipient.

S. Rep. No. 95-114, at 10.

[76] *See* 15 U.S.C. §§ 78dd-1(a), 78dd-2(a), 78dd-3(a).

[77] *See, e.g.*, Complaint, SEC v. Monsanto Co., No. 05-cv-14 (D.D.C. Jan. 6, 2005) (among other things, the company paid a $50,000 bribe to influence an Indonesian official to repeal an unfavorable law, which was not repealed despite the bribe), *available at* http://www.sec.gov/litigation/complaints/comp19023.pdf; Criminal Information, United States v. Monsanto Co., No. 05-cr-8 (D.D.C. Jan. 6, 2005), *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/monsanto-co/01-06-05monsanto-info.pdf.

[78] Jury instructions in FCPA cases have defined "corruptly" consistent with the definition found in the legislative history. *See, e.g.*, Jury Instructions at 22-23, *United States v. Esquenazi*, *supra* note 44; Jury Instructions at 10, *United States v. Green*, *supra* note 44; Jury Instructions at 35, *United States v. Jefferson*, *supra* note 44; Jury Instructions at 25, *United States v. Bourke*, *supra* note 44; Jury Instructions at 17, *United States v. Kay*, *supra* note 44; Jury Instructions at 5, *United States v. Mead*, *supra* note 44.

[79] *See* Complaint, SEC v. Innospec, Inc., No. 10-cv-448 (D.D.C. Mar. 18, 2010), ECF No. 1 [hereinafter *SEC v. Innospec*], *available at* http://www.sec.gov/litigation/complaints/2010/comp21454.pdf; Criminal Information at 8, United States v. Innospec Inc., No. 10-cr-61 (D.D.C. Mar. 17, 2010), ECF No. 1 [hereinafter *United States v. Innospec*], *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/innospec-inc/03-17-10innospec-info.pdf.

[80] *See* Complaint, *SEC v. Innospec*, *supra* note 79; Criminal Information, *United States v. Innospec*, *supra* note 79.

[81] *See* 15 U.S.C. §§ 78dd-1(c)(2)(A), 78dd-2(g)(2)(A), and 78dd-3(3)(2)(A).

[82] *Compare* 15 U.S.C. § 78ff(c)(1)(A) (corporate criminal liability under issuer provision) *with* § 78ff(c)(2)(A) (individual criminal liability under issuer provision); *compare* 15 U.S.C. § 78dd-2(g)(1)(A) (corporate criminal liability under domestic concern provision) *with* § 78dd-2(g)(2)(A) (individual criminal liability under issuer provision); *compare* 15 U.S.C. § 78dd-3(e)(1)(A) (corporate criminal liability for territorial provision) *with* § 78dd-3(e)(2)(A) (individual criminal liability for territorial provision). However, companies still must act corruptly. *See* Section 30A(a), 15 U.S.C. § 78dd-1(a); 15 U.S.C. §§ 78dd-2(a), 78dd-3(a).

[83] United States v. Kay, 513 F.3d 432, 448 (5th Cir. 2007); *see also* Jury Instructions at 38, *United States v. Esquenazi*, *supra* note 44; Jury Instructions at 10, *United States v. Green*, *supra* note 44; Jury Instructions at 35, *United States v. Jefferson*, *supra* note 44; Jury Instructions at 25, *United States v. Bourke*, *supra* note 44; Jury Instructions at 5, *United States v. Mead*, *supra* note 44.

[84] Bryan v. United States, 524 U.S. 184, 191-92 (1998) (construing "willfully" in the context of 18 U.S.C. § 924(a)(1)(A)) (quoting Ratzlaf v. United States, 510 U.S. 135, 137 (1994)); *see also Kay*, 513 F.3d at 446-51 (discussing *Bryan* and term "willfully" under the FCPA).

[85] *Kay*, 513 F.3d at 447-48; Stichting Ter Behartiging Van de Belangen Van Oudaandeelhouders In Het Kapitaal Van Saybolt Int'l B.V. v. Schreiber, 327 F.3d 173, 181 (2d Cir. 2003).

[86] The phrase "anything of value" is not defined in the FCPA, but the identical phrase under the domestic bribery statute has been broadly construed to include both *tangible* and *intangible* benefits. *See, e.g.*, United States v. Moore, 525 F.3d 1033, 1048 (11th Cir. 2008) (rejecting defendant's objection to instruction defining sex as a "thing of value," which "unambiguously covers intangible considerations"); United States v. Gorman, 807 F.2d 1299, 1304-05 (6th Cir. 1986) (holding that loans and promises of future employment are "things of value"); United States v. Williams, 705 F.2d 603, 622-23 (2d Cir. 1983) (approving jury instruction that stock could be a "thing of value" if defendant believed it had value, even though the shares had no commercial value, and noting that "[t]he phrase 'anything of value' in bribery and related statutes has consistently been given a broad meaning").

[87] Section 30A(a), 15 U.S.C. § 78dd-1(a); 15 U.S.C. §§ 78dd-2(a), 78dd-3(a) (emphasis added).

[88] Like the FCPA, the domestic bribery statute, 18 U.S.C. § 201, prohibits giving, offering, or promising "anything of value." Numerous domestic bribery cases under Section 201 have involved "small" dollar bribes. *See, e.g.*, United States v. Franco, 632 F.3d 880, 882-84 (5th Cir. 2011) (affirming bribery convictions of inmate for paying correctional officer $325 to obtain cell phone, food, and marijuana, and noting that 18 U.S.C. § 201 does not contain minimum monetary threshold); United States v. Williams, 216 F.3d 1099, 1103 (D.C. Cir. 2000) (affirming bribery conviction for $70 bribe to vehicle inspector); United States v. Traitz, 871 F.2d 368, 396 (3rd Cir. 1989) (affirming bribery conviction for $100 bribe paid to official of Occupational Health and Safety Administration); United States v. Hsieh Hui Mei Chen, 754 F.2d 817, 822 (9th Cir. 1985) (affirming bribery convictions including $100 bribe to immigration official); United States v. Bishton, 463 F.2d 887, 889 (D.C. Cir. 1972) (affirming bribery conviction for $100 bribe to division chief of District of Columbia Sewer Operations Division).

[89] Complaint, *SEC v. Daimler AG*, *supra* note 48; Criminal Information, *United States v. Daimler AG*, *supra* note 48.

[90] Complaint, SEC v. Halliburton Company and KBR, Inc., No. 09-cv-399 (S.D. Tex. Feb. 11, 2009), ECF No 1 [hereinafter *SEC v. Halliburton and KBR*], *available at* http://www.sec.gov/litigation/complaints/2009/comp20897.pdf; Criminal Information, United States v. Kellogg Brown & Root LLC, No. 09-cr-71, ECF No. 1 (S.D. Tex. Feb. 6, 2009) [hereinafter *United States v. KBR*], *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/kelloggb/02-06-09kbr-info.pdf.

[91] Complaint, *SEC v. Halliburton and KBR*, *supra* note 90; Criminal Information, *United States v. KBR*, *supra* note 90.

[92] *See, e.g.*, Complaint, SEC v. RAE Sys. Inc., No. 10-cv-2093 (D.D.C. Dec. 10, 2010), ECF No. 1 [hereinafter *SEC v. RAE Sys., Inc.*] (fur coat, among other extravagant gifts), *available at* http://www.sec.gov/litigation/complaints/2010/comp21770.pdf; Non-Pros. Agreement, In re RAE Sys. Inc. (Dec. 10, 2010) [hereinafter *In re RAE Sys. Inc.*] (same), *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/rae-systems/12-10-10rae-systems.pdf; Complaint, *SEC v. Daimler AG*, *supra* note 48 (armored Mercedes Benz worth €300,000); Criminal Information, *United States v. Daimler AG*, *supra* note 48 (same).

[93] *See* Complaint, SEC v. ABB Ltd, No. 04-cv-1141 (D.D.C. July 6, 2004), ECF No. 1, *available at* http://www.sec.gov/litigation/complaints/comp18775.pdf; Criminal Information, United States v. ABB Vetco Gray Inc., *et al.*, No. 04-cr-279 (S.D. Tex. June 22, 2004), ECF No. 1 [hereinafter *United States v. ABB Vetco Gray*], *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/abb/06-22-04abbvetco-info.pdf.

[94] Complaint, SEC v. UTStarcom, Inc., No. 09-cv-6094 (N.D. Cal. Dec. 31, 2009), ECF No. 1 [hereinafter *SEC v. UTStarcom*], *available at* http://www.sec.gov/litigation/complaints/2009/comp21357.pdf; Non-Pros. Agreement, In re UTStarcom Inc. (Dec. 31, 2009) [hereinafter *In re UTStarcom*], *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/utstarcom-inc/12-31-09utstarcom-agree.pdf.

[95] Complaint, *SEC v. UTStarcom*, *supra* note 94; Non-Pros. Agreement, *In re UTStarcom*, *supra* note 94.

[96] Complaint, *SEC v. UTStarcom*, *supra* note 94; Non-Pros. Agreement, *In re UTStarcom*, *supra* note 94.

[97] Complaint, SEC v. Lucent Technologies Inc., No. 07-cv-2301 (D.D.C. Dec. 21, 2007), ECF No.1 [hereinafter *SEC v. Lucent*], *available at* http://www.sec.gov/litigation/complaints/2007/comp20414.pdf; Non-Pros. Agreement, In re Lucent Technologies (Nov. 14, 2007) [hereinafter *In re Lucent*], *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/lucent-tech/11-14-07lucent-agree.pdf.

[98] Complaint, *SEC v. Lucent*, *supra* note 97; Non-Pros. Agreement, *In re Lucent*, *supra* note 97.

[99] The company consented to the entry of a final judgment permanently

enjoining it from future violations of the books and records and internal controls provisions and paid a civil penalty of $1,500,000. Complaint, *SEC v. Lucent*, *supra* note 97. Additionally, the company entered into a non-prosecution agreement with DOJ and paid a $1,000,000 monetary penalty. Non-Pros. Agreement, *In re Lucent*, *supra* note 97.

[100] United States v. Liebo, 923 F.2d 1308, 1311 (8th Cir. 1991).

[101] Judgment, United States v. Liebo, No. 89-cr-76 (D. Minn. Jan. 31, 1992), *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/liebor/1992-01-31-liebor-judgment.pdf.

[102] Complaint, SEC v. Schering-Plough Corp., No. 04-cv-945 (D.D.C. June 9, 2004), ECF No. 1, *available at* http://www.sec.gov/litigation/complaints/comp18740.pdf; Admin. Proceeding Order, In the Matter of Schering-Plough Corp., Exchange Act Release No. 49838 (June 9, 2004) (finding that company violated FCPA accounting provisions and imposing $500,000 civil monetary penalty), *available at* http://www.sec.gov/litigation/admin/34-49838.htm.

[103] FCPA opinion procedure releases can be found at http://www.justice.gov/criminal/fraud/fcpa/. In the case of the company seeking to contribute the $1.42 million grant to a local MFI, DOJ noted that it had undertaken each of these due diligence steps and controls, in addition to others, that would minimize the likelihood that anything of value would be given to any officials of the Eurasian country. U.S. Dept. of Justice, FCPA Op. Release 10-02 (July 16, 2010), *available at* http://www.justice.gov/criminal/fraud/fcpa/opinion/2010/1002.pdf.

[104] U.S. Dept. of Justice, FCPA Op. Release 95-01 (Jan. 11, 1995), *available at* http://www.justice.gov/criminal/fraud/fcpa/opinion/1995/9501.pdf.

[105] *Id.*

[106] *Id.*

[107] U.S. Dept. of Justice, FCPA Op. Release 97-02 (Nov. 5, 1997), *available at* http://www.justice.gov/criminal/fraud/fcpa/opinion/1997/9702.pdf; U.S. Dept. of Justice, FCPA Op. Release 06-01 (Oct. 16, 2006), *available at* http://www.justice.gov/criminal/fraud/fcpa/opinion/2006/0601.pdf.

[108] U.S. Dept. of Justice, FCPA Op. Release 06-01 (Oct. 16, 2006).

[109] *Id.*

[110] *Id.*

[111] *See* Section 30A(a)(1)-(3) of the Exchange Act, 15 U.S.C. § 78dd-1(a)(1)-(3); 15 U.S.C. §§ 78dd-2(a)(1)-(3), 78dd-3(a)(1)-(3).

[112] Section 30A(f)(1)(A) of the Exchange Act, 15 U.S.C. § 78dd-1(f)(1)(A); 15 U.S.C. §§ 78dd-2(h)(2)(A), 78dd-3(f)(2)(A).

[113] Under the FCPA, any person "acting in an official capacity for or on behalf of" a foreign government, a department, agency, or instrumentality thereof, or a public international organization, is a foreign official. Section 30A(f)(1)(A), 15 U.S.C. § 78dd-1(f)(1)(A); 15 U.S.C. §§ 78dd-2(h)(2)(A), 78dd-2(f)(2)(A). *See also* U.S. Dept. of Justice, FCPA Op. Release No. 10-03, at 2 (Sept. 1, 2010), *available at* http://www.justice.gov/criminal/fraud/fcpa/opinion/2010/1003.pdf (listing safeguards to ensure that consultant was not acting on behalf of foreign government).

[114] *But see* Sections 30A(b) and f(3)(A) of the Exchange Act, 15 U.S.C. § 78dd-1(b) & (f)(3); 15 U.S.C. §§ 78dd-2(b) & (h)(4), 78dd-3(b) & (f)(4) (facilitating payments exception).

[115] Even though payments to a foreign government may not violate the anti-bribery provisions of the FCPA, such payments may violate other U.S. laws, including wire fraud, money laundering, and the FCPA's accounting provisions. This was the case in a series of matters brought by DOJ and SEC involving kickbacks to the Iraqi government through the United Nations Oil-for-Food Programme. *See, e.g.*, Complaint, *SEC v. Innospec*, *supra* note 79; Criminal Information, *United States v. Innospec*, *supra* note 79; Complaint, SEC v. Novo Nordisk A/S, No. 09-cv-862 (D.D.C. May 11, 2009), ECF No. 1, *available at* http://www.sec.gov/litigation/complaints/2009/comp21033.pdf; Criminal Information, United States v. Novo Nordisk A/S, No. 09-cr-126 (D.D.C. May 11, 2009), ECF No. 1, *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/nordiskn/05-11-09novo-info.pdf; Complaint, SEC v. Ingersoll-Rand Company Ltd., No. 07-cv-1955 (D.D.C. Oct. 31, 2007), ECF No. 1, *available at* http://www.sec.gov/litigation/complaints/2007/comp20353.pdf; Criminal Information, United States v. Ingersoll-Rand Italiana SpA, No. 07-cr-294 (D.D.C. Oct. 31, 2007), ECF No. 1, *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/ingerand-italiana/10-31-07ingersollrand-info.pdf; Complaint, SEC v. York Int'l Corp., No. 07-cv-1750 (D.D.C. Oct. 1, 2007), ECF No. 1 [hereinafter *SEC v. York Int'l Corp.*], *available at* http://www.sec.gov/litigation/complaints/2007/comp20319.pdf; Criminal Information, United States v. York Int'l Corp., No. 07-cr-253 (D.D.C. Oct. 1, 2007), ECF No. 1 [hereinafter *United States v. York Int'l Corp.*], *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/york/10-01-07york-info.pdf; Complaint, SEC v. Textron Inc., No. 07-cv-1505 (D.D.C. Aug. 23, 2007), ECF No. 1 [hereinafter *SEC v. Textron*], *available at* http://www.sec.gov/litigation/complaints/2007/comp20251.pdf; Non-Pros. Agreement, In re Textron Inc. (Aug. 23, 2007), *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/textron-inc/08-21-07textron-agree.pdf. DOJ has issued opinion procedure releases concerning payments (that were, in essence, donations) to government agencies or departments. *See* U.S. Dept. of Justice, FCPA Op. Release 09-01 (Aug. 3, 2009) (involving donation of 100 medical devices to foreign government), *available at* http://www.justice.gov/criminal/fraud/fcpa/opinion/2009/0901.pdf; U.S. Dept. of Justice, FCPA Op. Release 06-01 (Oct. 16, 2006) (involving contribution of $25,000 to regional customs department to pay incentive rewards to improve local enforcement of anti-counterfeiting laws), *available at* http://www.justice.gov/criminal/fraud/fcpa/opinion/2006/0601.pdf.

[116] The United States has some state-owned entities, like the Tennessee Valley Authority, that are instrumentalities of the government. McCarthy v. Middle Tenn. Elec. Membership Corp., 466 F.3d 399, 411 n.18 (6th Cir. 2006) ("[T]here is no question that TVA is an agency and instrumentality of the United States.") (internal quotes omitted).

[117] During the period surrounding the FCPA's adoption, state-owned entities held virtual monopolies and operated under state-controlled price-setting in many national industries around the world. *See generally* World Bank, Bureaucrats in Business: The Economics and Politics of Government Ownership, World Bank Policy Research Report at 78 (1995); Sunita Kikeri and Aishetu Kolo, State Enterprises, The World Bank Group (Feb. 2006), *available at* http://rru.worldbank.org/documents/publicpolicyjournal/304Kikeri_Kolo.pdf.

[118] *Id.* at 1 ("[A]fter more than two decades of privatization, government ownership and control remains widespread in many regions—and in many parts of the world still dominates certain sectors.").

[119] To date, consistent with the approach taken by DOJ and SEC, all district courts that have considered this issue have concluded that this is an issue of fact for a jury to decide. *See* Order, United States v. Carson, 2011 WL 5101701, No. 09-cr-77 (C.D. Cal. May 18, 2011), ECF No. 373 [hereinafter *United States v. Carson*]; United States v. Aguilar, 783 F. Supp. 2d 1108 (C.D. Cal. 2011); Order, *United States v. Esquenazi*, *supra* note 44, ECF No. 309; *see also* Order, United States v. O'Shea, No. 09-cr-629 (S.D. Tex. Jan. 3, 2012), ECF No. 142; Order, United States v. Nguyen, No. 08-cr-522 (E.D. Pa. Dec. 30, 2009), ECF No. 144. These district court decisions are consistent with the acceptance by district courts around the country of over 35 guilty pleas by individuals who admitted to violating the FCPA by bribing officials of state-owned or state-controlled entities. *See* Government's Opposition to Defendants' Amended Motion to Dismiss Counts One Through Ten of the Indictment at 18, *United States v. Carson*, *supra* note 119, ECF No. 332; Exhibit I, *United States v. Carson*, *supra* note 119, ECF No. 335 (list of examples of enforcement actions based on foreign officials of state-owned entities).

[120] Jury Instructions, *United States v. Esquenazi*, *supra* note 44, ECF No. 520; Order at 5 and Jury Instructions, *United States* v. *Carson*, *supra* note 119, ECF No. 373 and ECF No. 549; *Aguilar*, 783 F. Supp. 2d at 1115.

[121] Criminal Information, United States v. C.E. Millier Corp., *et al.*, No. 82-cr-788 (C.D. Cal. Sept. 17, 1982), *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/ce-miller/1982-09-17-ce-miller-information.pdf.

[122] *See* Complaint, SEC v. Sam P. Wallace Co., Inc., *et al.*, No. 81-cv-1915 (D.D.C. Aug. 31, 1982); Criminal Information, United States v. Sam P. Wallace Co., Inc., No. 83-cr-34 (D.P.R. Feb. 23, 1983), *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/sam-wallace-company/1983-02-23-sam-wallace-company-information.pdf; *see also* Criminal Information, United States v. Goodyear Int'l Corp., No. 89-cr-156 (D.D.C. May 11, 1989) (Iraqi Trading Company identified as "instrumentality of the Government of the Republic of Iraq"), *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/goodyear/1989-

05-11-goodyear-information.pdf.

[123] *See* Complaint, *SEC v. ABB*, *supra* note 48; Criminal Information at 3, United States v. ABB Inc., No. 10-cr-664 (S.D. Tex. Sept. 29, 2010), ECF No. 1 [hereinafter *United States v. ABB*], *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/abb/09-20-10abbinc-info.pdf; Constitución Política de los Estados Unidos Mexicanos [C.P.], as amended, art. 27, Diario Oficial de la Federación [DO], 5 de Febrero de 1917 (Mex.); Ley Del Servicio Publico de Energia Electrica, as amended, art. 1-3, 10, Diario Oficial de la Federación [DO], 22 de Diciembre de 1975 (Mex.).

[124] *See* Indictment at 2, *United States v. Esquenazi*, *supra* note 44, ECF No. 3; Affidavit of Mr. Louis Gary Lissade at 1-9, *id.*, ECF No. 417-2.

[125] Criminal Information at 30-31, *United States v. Alcatel-Lucent France*, *supra* note 56, ECF No. 10.

[126] *Id.*

[127] *See* International Anti-Bribery and Fair Competition Act of 1998, Pub. L. 105-366 § 2, 112 Stat. 3302, 3303, 3305, 3308 (1998).

[128] Section 30A(F)(1)(B) of the Exchange Act, 15 U.S.C. § 78dd-1(f)(1)(B); 15 U.S.C. §§ 78dd-2(h)(2)(B), 78dd-3(f)(2)(B).

[129] Third parties and intermediaries themselves are also liable for FCPA violations. Section 30A(a) of the Exchange Act, 15 U.S.C. § 78dd-1(a); 15 U.S.C. §§ 78dd-2(a), and 78dd-3(a).

[130] Section 30A(a)(3) of the Exchange Act, 15 U.S.C. § 78dd-1(a)(3); 15 U.S.C. §§ 78dd-2(a)(3), 78dd-3(a)(3).

[131] *See, e.g.*, Complaint, SEC v. Johnson & Johnson, No. 11-cv-686 (D.D.C. Apr. 8, 2011) [hereinafter *SEC v. Johnson & Johnson*] (bribes paid through Greek and Romanian agents)), *available at* http://www.sec.gov/litigation/complaints/2011/comp21922.pdf; Criminal Information, United States v. DePuy, Inc., No. 11-cr-99 (D.D.C. Apr. 8, 2011), ECF No. 1 [hereinafter *United States v. DePuy*] (bribes paid through Greek agents), *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/depuy-inc/04-08-11depuy-info.pdf; Complaint, *SEC v. ABB*, *supra* note 48 (bribes paid through Mexican agents); Criminal Information, *United States v. ABB*, *supra* note 123 (same); Criminal Information, United States v. Int'l Harvester Co., No. 82-cr-244 (S.D. Tex. Nov. 17, 1982) (bribes paid through Mexican agent), *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/international-harvester/1982-11-17-international-harvester-information.pdf.

[132] *See* Criminal Information, United States v. Marubeni Corp., No. 12-cr-22 (S.D. Tex. Jan. 17, 2012), ECF No. 1 [hereinafter *United States v. Marubeni*], *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/marubeni/2012-01-17-marubeni-information.pdf; Criminal Information, *United States v. JGC Corp.*, *supra* note 60, ECF No. 1; Criminal Information, *United States v. Snamprogetti*, *supra* note 60, ECF No. 1; Complaint, SEC v. ENI, S.p.A. and Snamprogetti Netherlands B.V., No. 10-cv-2414 (S.D. Tex. July 7, 2010), ECF No. 1, *available at* http://www.sec.gov/litigation/complaints/2010/comp-pr2010-119.pdf; Criminal Information, United States v. Technip S.A., No. 10-cr-439 (S.D. Tex. June 28, 2010), ECF No. 1 [hereinafter *United States v. Technip*], *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/technip-sa/06-28-10-technip-%20information.pdf; Complaint, SEC v. Technip, No. 10-cv-2289 (S.D. Tex. June 28, 2010), ECF No. 1 [hereinafter *SEC v. Technip*], *available at* http://www.sec.gov/litigation/complaints/2010/comp-pr2010-110.pdf; Indictment, *United States v. Tesler*, *supra* note 50; Complaint, *SEC v. Halliburton and KBR*, *supra* note 90; Criminal Information, *United States v. KBR*, *supra* note 90; Criminal Information, *United States v. Stanley*, No. 08-cr-597 (S.D. Tex. Sept. 3, 2008), ECF No. 1, *available at* http://justice.gov/criminal/fraud/fcpa/cases/stanleya/08-29-08stanley-info.pdf.

[133] *See* Criminal Information, United States v. AGA Medical Corp., No. 08-cr-172, ECF No. 1 (D. Minn. June 3, 2008), *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/agamedcorp/06-03-08aga-info.pdf.

[134] Complaint, *SEC v. Innospec*, *supra* note 79; Criminal Information, *United States v. Innospec*, *supra* note 79; Superseding Criminal Information, *United States v. Naaman*, *supra* note 50, ECF No. 15, *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/naamano/06-24-10naaman-supsersed-info.pdf; Complaint, *SEC v. Turner*, *supra* note 50.

[135] *See* sources cited *supra* note 68.

[136] *See* sources cited *supra* note 68.

[137] Section 30A(a)(3) of the Exchange Act, 15 U.S.C. § 78dd-1(a)(3); 15 U.S.C. §§ 78dd-2(a)(3), 78dd-3(a)(3).

[138] *See* Section 30A(f)(2)(A) of the Exchange Act, 15 U.S.C. § 78dd-1(f)(2)(A); 15 U.S.C. §§ 78dd-2(h)(3)(A), 78dd-3(f)(3)(A).

[139] *See* Section 30A(f)(2)(B) of the Exchange Act, 15 U.S.C. § 78dd-1(f)(2)(B); 15 U.S.C. §§ 78dd-2(h)(3)(B), 78dd-3(f)(3)(B). The "knowing" standard was intended to cover "both prohibited actions that are taken with 'actual knowledge' of intended results as well as other actions that, while falling short of what the law terms 'positive knowledge,' nevertheless evidence a conscious disregard or deliberate ignorance of known circumstances that should reasonably alert one to the high probability of violations of the Act." H.R. Rep. No. 100-576, at 920; *see also* Omnibus Trade and Competitiveness Act of 1988, Pub. L. No. 100-418, § 5003, 102 Stat. 1107, 1423-24 (1988).

[140] H.R. Rep. No. 100-576, at 920 (1988).

[141] Section 30A(c)(1) of the Exchange Act, 15 U.S.C. § 78dd-1(c)(1); 15 U.S.C. §§ 78dd-2(c)(1), 78dd-3(c)(1).

[142] H.R. Rep. No. 100-576, at 922. The conferees also noted that "[i]n interpreting what is 'lawful under the written laws and regulations' . . . the normal rules of legal construction would apply." *Id.*

[143] *See* United States v. Kozeny, 582 F. Supp. 2d 535, 537-40 (S.D.N.Y. 2008). Likewise, the court found that a provision under Azeri law that relieved bribe payors of criminal liability if they were extorted did not make the bribe payments legal. Azeri extortion law precludes the prosecution of the payor of the bribes for the illegal payments, but it does not make the payments legal. *Id.* at 540-41.

[144] Section 30A(c)(2)(A), (B) of the Exchange Act, 15 U.S.C. § 78dd-1(c)(2); 15 U.S.C. §§ 78dd-2(c)(2), 78dd-3(c)(2).

[145] For example, the Eighth Circuit Court of Appeals found that providing airline tickets to a government official in order to corruptly influence that official may form the basis for a violation of the FCPA's anti-bribery provisions. *See Liebo*, 923 F. 2d at 1311-12.

[146] *See generally* U.S. Dept. of Justice, FCPA Op. Release 11-01 (June 30, 2011) (travel, lodging, and meal expenses of two foreign officials for two-day trip to United States to learn about services of U.S. adoption service provider), *available at* http://www.justice.gov/criminal/fraud/fcpa/opinion/2011/11-01.pdf; U.S. Dept. of Justice, FCPA Op. Release 08-03 (July 11, 2008) (stipends to reimburse minimal travel expenses of local, government-affiliated journalists attending press conference in foreign country), *available at* http://www.justice.gov/criminal/fraud/fcpa/opinion/2008/0803.pdf; U.S. Dept. of Justice, FCPA Op. Release 07-02 (Sept. 11, 2007) (domestic travel, lodging, and meal expenses of six foreign officials for six-week educational program), *available at* http://www.justice.gov/criminal/fraud/fcpa/opinion/2007/0702.pdf; U.S. Dept. of Justice, FCPA Op. Release 07-01 (July 24, 2007) (domestic travel, lodging, and meal expenses of six foreign officials for four-day educational and promotional tour of U.S. company's operations sites), *available at* http://www.justice.gov/criminal/fraud/fcpa/opinion/2007/0701.pdf; U.S. Dept. of Justice, FCPA Op. Release 04-04 (Sept. 3, 2004) (travel, lodging, and modest per diem expenses of five foreign officials to participate in nine-day study tour of mutual insurance companies), *available at* http://www.justice.gov/criminal/fraud/fcpa/opinion/2004/0404.pdf; U.S. Dept. of Justice, FCPA Op. Release 04-03 (June 14, 2004) (travel, lodging, meal, and insurance expenses for twelve foreign officials and one translator on ten-day trip to three U.S. cities to meet with U.S. public sector officials), *available at* http://www.justice.gov/criminal/fraud/fcpa/opinion/2004/0403.pdf; U.S. Dept. of Justice, FCPA Op. Release 04-01 (Jan. 6, 2004) (seminar expenses, including receptions, meals, transportation and lodging costs, for one-and-a-half day comparative law seminar on labor and employment law in foreign country), *available at* http://www.justice.gov/criminal/fraud/fcpa/

opinion/2004/0401.pdf; U.S. Dept. of Justice, FCPA Op. Release 96-01 (Nov. 25, 1996) (travel, lodging, and meal expenses of regional government representatives to attend training courses in United States), *available at* http://www.justice.gov/criminal/fraud/fcpa/opinion/1996/9601.pdf; U.S. Dept. of Justice, FCPA Op. Release 92-01 (Feb. 1992) (training expenses so that foreign officials could effectively perform duties related to execution and performance of joint-venture agreement, including seminar fees, airfare, lodging, meals, and ground transportation), *available at* http://www.justice.gov/criminal/fraud/fcpa/review/1992/r9201.pdf.

[147] U.S. Dept. of Justice, FCPA Op. Release 11-01 (June 30, 2011); U.S. Dept. of Justice, FCPA Op. Release 07-02 (Sept. 11, 2007); U.S. Dept. of Justice, FCPA Op. Release 07-01 (July 24, 2007); U.S. Dept. of Justice, FCPA Op. Release 04-04 (Sept. 3, 2004); U.S. Dept. of Justice, FCPA Op. Release 04-03 (June 14, 2004); U.S. Dept. of Justice, FCPA Op. Release 04-01 (Jan. 6, 2004).

[148] U.S. Dept. of Justice, FCPA Op. Release 96-01 (Nov. 25, 1996).

[149] U.S. Dept. of Justice, FCPA Op. Release 11-01 (June 30, 2011); U.S. Dept. of Justice, FCPA Op. Release 07-02 (Sept. 11, 2007); U.S. Dept. of Justice, FCPA Op. Release 07-01 (July 24, 2007); U.S. Dept. of Justice, FCPA Op. Release 04-04 (Sept. 3, 2004); U.S. Dept. of Justice, FCPA Op. Release 04-01 (Jan. 6, 2004) .

[150] U.S. Dept. of Justice, FCPA Op. Release 04-01 (Jan. 6, 2004).

[151] U.S. Dept. of Justice, FCPA Op. Release 08-03 (July 11, 2008).

[152] U.S. Dept. of Justice, FCPA Op. Release 11-01 (June 30, 2011); U.S. Dept. of Justice, FCPA Op. Release 92-01 (Feb. 1992).

[153] U.S. Dept. of Justice, FCPA Op. Release 08-03 (July 11, 2008).

[154] *Id.*

[155] *Id.*; U.S. Dept. of Justice, FCPA Op. Release 04-03 (June 14, 2004); U.S. Dept. of Justice, FCPA Op. Release 04-01 (Jan. 6, 2004); U.S. Dept. of Justice, FCPA Op. Release 07-01 (July 24, 2007).

[156] U.S. Dept. of Justice, FCPA Op. Release 11-01 (June 30, 2011); U.S. Dept. of Justice, FCPA Op. Release 07-02 (Sept. 11, 2007); U.S. Dept. of Justice, FCPA Op. Release 07-01 (July 24, 2007); U.S. Dept. of Justice, FCPA Op. Release 04-04 (Sept. 3, 2004); U.S. Dept. of Justice, FCPA Op. Release 04-03 (June 14, 2004); U.S. Dept. of Justice, FCPA Op. Release 04-01 (Jan. 6, 2004).

[157] U.S. Dept. of Justice, FCPA Op. Release 07-01 (July 24, 2007); U.S. Dept. of Justice, FCPA Op. Release 08-03 (July 11, 2008).

[158] For example, DOJ has previously approved expenditures on behalf of family members or for entertainment purposes under certain, limited circumstances. *See, e.g.*, U.S. Dept. of Justice, FCPA Rev. P. Release 83-02 (July 26, 1983) (declining to take enforcement action against company seeking to provide promotional tour for foreign official and wife, where both had already planned a trip to the United States at their own expense and company proposed to pay only for all reasonable and necessary actual domestic expenses for the extension of their travel to allow the promotional tour, which would not exceed $5,000), *available at* http://www.justice.gov/criminal/fraud/fcpa/review/1983/r8302.pdf.

[159] Unlike the local law and bona fide expenditures defenses, the facilitating payments exception is not an affirmative defense to the FCPA. Rather, payments of this kind fall outside the scope of the FCPA's bribery prohibition. Prior to 1988, the "facilitating payments" exception was incorporated into the definition of "foreign official," which excluded from the statute's purview officials whose duties were primarily ministerial or clerical. *See* Foreign Corrupt Practices Act of 1977, Pub. L. No. 95-213, § 104(d)(2), 91 Stat. 1494, 1498 (1977) (providing that the term foreign official "does not include any employee of a foreign government or any department, agency, or instrumentality thereof whose duties are essentially ministerial or clerical"). The original exception thus focused on the duties of the recipient, rather than the purpose of the payment. In practice, however, it proved difficult to determine whether a foreign official's duties were "ministerial or clerical." S. Rep. No. 100-85, at 53. Responding to criticism that the statutory language "does not clearly reflect Congressional intent and the boundaries of the prohibited conduct," Congress revised the FCPA to define the exception in terms of the purpose of the payment. H. Rep. No. 100-40, pt. 2, at 77. In doing so, Congress reiterated that while its policy to exclude facilitating payments reflected practical considerations of enforcement, "such payments should not be condoned." *Id.* The enacted language reflects this narrow purpose.

[160] In exempting facilitating payments, Congress sought to distinguish them as "payments which merely move a particular matter toward an eventual act or decision or which do not involve any discretionary action," giving the examples of "a gratuity paid to a customs official to speed the processing of a customs document" or "payments made to secure permits, licenses, or the expeditious performance of similar duties of an essentially ministerial or clerical nature which must of necessity be performed in any event." H.R. Rep. No. 95-640, at 8.

[161] Section 30A(f)(3)(B) of the Exchange Act, 15 U.S.C. § 78dd-1(f)(3)(B); 15 U.S.C. §§ 78dd-2(h)(4)(B), 78dd-3(f)(4)(B).

[162] In a 2004 decision, the Fifth Circuit emphasized this precise point, commenting on the limited nature of the facilitating payments exception:

> A brief review of the types of routine governmental actions enumerated by Congress shows how limited Congress wanted to make the grease exceptions. Routine governmental action, for instance, includes "obtaining permits, licenses, or other official documents to qualify a person to do business in a foreign country," and "scheduling inspections associated with contract performance or inspections related to transit of goods across country." Therefore, routine governmental action does not include the issuance of *every* official document or *every* inspection, but only (1) documentation that qualifies a party to do business and (2) scheduling an inspection—very narrow categories of largely non-discretionary, ministerial activities performed by mid- or low-level foreign functionaries.

United States v. Kay; 359 F.3d 738, 750-51 (5th Cir. 2004) (internal footnote omitted) (emphasis in original).

[163] Non-Pros. Agreement, In re Helmerich & Payne, Inc. (July 29, 2009) [hereinafter *In re Helmerich & Payne*], *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/helmerich-payne/06-29-09helmerich-agree.pdf; Admin. Proceeding Order, In the Matter of Helmerich & Payne, Inc., Exchange Act Release No. 60400 (July 30, 2009) [hereinafter *In the Matter of Helmerich & Payne*], *available at* http://www.sec.gov/litigation/admin/2009/34-60400.pdf.

[164] Criminal Information, Vetco Gray Controls Inc., *et al.*, No. 07-cr-4 No. (S.D. Tex. Jan. 5, 2007), ECF Nos. 1-2, *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/vetco-controls/02-06-07vetcogray-info.pdf.

[165] Complaint, SEC v. Noble Corp., No. 10-cv-4336 (S.D. Tex. Nov. 4, 2010), ECF No. 1, *available at* http://www.sec.gov/litigation/complaints/2010/comp21728.pdf; Non-Pros. Agreement, In re Noble Corp. (Nov. 4, 2010), *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/noble-corp/11-04-10noble-corp-npa.pdf; *see also sources cited supra* note 68.

[166] Working Group on Bribery, *2009 Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions*, at § VI (recommending countries should periodically review their policies and approach to facilitation payments and should encourage companies to prohibit or discourage facilitation payments "in view of the corrosive effect of small facilitation payments, particularly on sustainable economic development and the rule of law"); Working Group on Bribery, *United States: Phase 3*, at 24 (Oct. 15, 2010), *available at* http://www.oecd.org/dataoecd/10/49/46213841.pdf (commending United States for steps taken in line with 2009 recommendation to encourage companies to prohibit or discourage facilitation payments).

[167] Facilitating payments are illegal under the U.K. Bribery Act 2010, which came into force on July 1, 2011, and were also illegal under prior U.K. legislation. *See* Bribery Act 2010, c.23 (Eng.), *available at* http://www.legislation.gov.uk/ukpga/2010/23/contents; *see also* U.K. Ministry of Justice, *The Bribery Act 2010: Guidance About Procedures Which Relevant Commercial Organisations Can Put into Place to Prevent Persons Associated with Them from Bribing (Section 9 of the Bribery Act 2010)*, at 18 (2011), *available at* http://www.justice.gov.uk/guidance/docs/bribery-act-2010-guidance.pdf.

[168] *See, e.g.*, Non-Pros. Agreement, *In re Helmerich & Payne*, *supra* note 163; Admin. Proceeding Order, *In the Matter of Helmerich & Payne*, *supra* note 163.

[169] In order to establish duress or coercion, a defendant must demonstrate that the defendant was under unlawful, present, immediate, and

impending threat of death or serious bodily injury; that the defendant did not negligently or recklessly create a situation where he would be forced to engage in criminal conduct (e.g., had been making payments as part of an ongoing bribery scheme); that the defendant had no reasonable legal alternative to violating the law; and that there was a direct causal relationship between the criminal action and the avoidance of the threatened harm. *See* Eleventh Circuit Pattern Jury Instr., Special Instr. No. 16 (2003); *see also* Fifth Circuit Pattern Jury Instr. No. 1.36 (2001); Sixth Circuit Pattern Jury Instr. No. 6.05 (2010); Seventh Circuit Pattern Jury Instr. No. 6.08 (1998); Ninth Circuit Pattern Jury Instr. No. 6.5 (2010); 1A Kevin F. O'Malley, Jay E. Grenig, Hon. William C. Lee, *Federal Jury Practice and Instructions* § 19.02 (6th ed. 2008 & Supp. 2012).

[170] S. Rep. No. 95-114, at 11.

[171] *Id.* at 10.

[172] *Id.* at 11.

[173] United States v. Kozeny, 582 F. Supp. 2d 535, 540 n.31 (S.D.N.Y. 2008).

[174] *Kozeny*, 582 F. Supp. 2d at 540 (citing S. Rep. No. 95-114, at 10-11).

[175] *Id.*

[176] These payments, however, must be accurately reflected in the company's books and records so that the company and its management are aware of the payments and can assure that the payments were properly made under the circumstances. For example, in one instance, a Kazakh immigration prosecutor threatened to fine, jail, or deport employees of a U.S. company's subsidiary. Believing the threats to be genuine, the employees in Kazakhstan sought guidance from senior management of the U.S. subsidiary and were authorized to make the payments. The employees then paid the government official a total of $45,000 using personal funds. The subsidiary reimbursed the employees, but it falsely recorded the reimbursements as "salary advances" or "visa fines." The parent company, which eventually discovered these payments, as well as other improperly booked cash payments made to a Kazakhstani consultant to obtain visas, was charged with civil violations of the accounting provisions. Admin. Proceeding Order, In the Matter of NATCO Group Inc., Exchange Act Release No. 61325 (Jan. 11, 2010), *available at* http://www.sec.gov/litigation/admin/2010/34-61325.pdf (imposing cease-and-desist order and $65,000 civil monetary penalty).

[177] *See* Jury Instructions at 21, United States v. Aguilar, No. 10-cr-1031 (C.D. Cal. May 16, 2011), ECF No. 511.

[178] *See, e.g.*, Pacific Can Co. v. Hewes, 95 F.2d 42, 46 (9th Cir. 1938) ("Where one corporation is controlled by another, the former acts not for itself but as directed by the latter, the same as an agent, and the principal is liable for the acts of its agent within the scope of the agent's authority."); United States v. NYNEX Corp., 788 F. Supp. 16, 18 n.3 (D.D.C. 1992) (holding that "[a] corporation can of course be held criminally liable for the acts of its agents," including "the conduct of its subsidiaries.").

[179] *Pacific Can Co.*, 95 F.2d at 46; *NYNEX Corp.*, 788 F. Supp. at 18 n.3.

[180] *See, e.g.*, Standard Oil Co. v. United States, 307 F.2d 120, 127 (5th Cir. 1962).

[181] Admin. Proceeding Order, In the Matter of United Industrial Corp., Exchange Act Release No. 60005 (May 29, 2009), *available at* http://www.sec.gov/litigation/admin/2009/34-60005.pdf; *see also* Lit. Release No. 21063, *SEC v. Worzel* (May 29, 2009), *available at* http://www.sec.gov/litigation/litreleases/2009/lr21063.htm.

[182] *See, e.g.*, Philip Urofksy, *What You Don't Know Can Hurt You: Successor Liability Resulting From Inadequate FCPA Due Diligence in M&A Transactions*, 1763 PLI/Corp. 631, 637 (2009) ("As a legal matter, when one corporation acquires another, it assumes any existing liabilities of that corporation, including liability for unlawful payments, regardless of whether it knows of them."). Whether or not successor liability applies to a particular corporate transaction depends on the facts involved and state, federal, and, potentially, foreign law.

[183] *See, e.g.*, Carolyn Lindsey, *More Than You Bargained for: Successor Liability Under the U.S. Foreign Corrupt Practices Act*, 35 Ohio N.U. L. Rev. 959, 966 (2009) ("Allowing a company to escape its debts and liabilities by merging with another entity is considered to lead to an unjust result.").

[184] *See, e.g.*, Melrose Distillers, Inc. v. United States, 359 U.S. 271, 274 (1959) (affirming criminal successor liability for antitrust violations); United States v. Alamo Bank of Texas, 880 F.2d 828, 830 (5th Cir. 1989) (affirming criminal successor liability for Bank Secrecy Act violations); United States v. Polizzi, 500 F.2d 856, 907 (9th Cir. 1974) (affirming criminal successor liability for conspiracy and Travel Act violations); United States v. Shields Rubber Corp., 732 F. Supp. 569, 571-72 (W.D. Pa. 1989) (permitting criminal successor liability for customs violations); *see also* United States v. Mobile Materials, Inc., 776 F.2d 1476, 1477 (10th Cir. 1985) (allowing criminal post-dissolution liability for antitrust, mail fraud, and false statement violations);.

[185] Complaint, SEC v. The Titan Corp., No. 05-cv-411 (D.D.C. Mar. 1, 2005) (discovery of FCPA violations during pre-acquisition due diligence protected potential acquiring company and led to termination of merger agreement), *available at* http://www.sec.gov/litigation/complaints/comp19107.pdf; Criminal Information, United States v. Titan Corp., No. 05-cr-314 (S.D. Cal. Mar. 1, 2005) (same) [hereinafter *United States v. Titan Corp.*], *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/titan-corp/03-01-05titan-info.pdf.

[186] For a discussion of declinations, see Chapter 7.

[187] *See* Complaint, SEC v. El Paso Corp., No. 07-cv-899 (S.D.N.Y. Feb. 7, 2007), ECF No. 1 [hereinafter *SEC v. El Paso Corp.*] (charging company with books and records and internal controls charges for improper payments to Iraq under U.N. Oil-for-Food Programme), *available at* http://www.sec.gov/litigation/complaints/2007/comp19991.pdf.

[188] Complaint, SEC v. Alliance One Int'l, Inc., No. 10-cv-1319 (D.D.C. Aug. 6, 2010), ECF No. 1, *available at* http://www.sec.gov/litigation/complaints/2010/comp21618-alliance-one.pdf; Non-Pros. Agreement, In re Alliance One Int'l, Inc. (Aug. 6, 2010), *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/alliance-one/08-06-10alliance-one-npa.pdf; Criminal Information, United States v. Alliance One Int'l AG, No. 10-cr-17 (W.D. Va. Aug. 6, 2010), ECF No. 3, *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/alliance-one/08-06-10alliance-one-info.pdf; Criminal Information, United States v. Alliance One Tobacco Osh, LLC, No. 10-cr-16 (W.D. Va. Aug. 6, 2010), ECF No. 3, *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/alliance-one/08-06-10alliance-one-tobaccoinfo.pdf.

[189] *See* Criminal Information, United States v. Syncor Taiwan, Inc., No. 02-cr-1244 (C.D. Cal. Dec. 5, 2002), ECF No. 1, *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/syncor-taiwan/12-05-02syncor-taiwan-info.pdf; Plea Agreement, United States v. Syncor Taiwan, Inc., No. 02-cr-1244 (C.D. Cal. Dec. 9, 2002), ECF No. 14, *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/syncor-taiwan/12-03-02syncor-taiwan-plea-agree.pdf.

[190] *See* Complaint, SEC v. Syncor Int'l Corp., No. 02-cv-2421 (D.D.C. Dec. 10, 2002), ECF No. 1, *available at* http://www.sec.gov/litigation/complaints/comp17887.htm; SEC v. Syncor International Corp., SEC Lit. Rel. 17997, (Dec. 10, 2002), *available at* http://www.sec.gov/litigation/litreleases/lr17887.htm.

[191] *See* Complaint, *SEC v. York Int'l Corp.*, *supra* note 115; Criminal Information, *United States v. York Int'l Corp.*, *supra* note 115.

[192] *See* Criminal Information, United States v. Latin Node, Inc., No. 09-cr-20239 (S.D. Fla. Mar. 23, 2009), ECF No. 1, *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/litton-applied/03-23-09latinnode-info.pdf; eLandia Int'l Inc., Annual Report (Form 10-K), at 20 (Apr. 2, 2009), *available at* http://www.sec.gov/Archives/edgar/data/1352819/000119312509070961/d10k.htm.

[193] *See* Criminal Information, United States v. Salvoch, No. 10-cr-20893 (S.D. Fla. Dec. 17, 2010), ECF No. 3, *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/salvoch/12-17-10salvoch-info.pdf; Criminal Information, United States v. Vasquez, No. 10-cr-20894 (S.D. Fla. Dec. 17, 2010), ECF No. 3, *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/vasquezjp/12-17-10vasquez-juan-info.pdf; Indictment, United States v. Granados, *et al.*, No. 10-cr-20881, (S.D.

Fla. Dec. 14, 2010), ECF No. 3, *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/granados-jorge/12-21-10granados-indict.pdf.

[194] *See* Deferred Pros. Agreement, *United States v. Snamprogetti*, *supra* note 60, ECF No. 3, *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/snamprogetti/07-07-10snamprogetti-dpa.pdf.

[195] *Compare* Criminal Information, *United States v. Snamprogetti*, *supra* note 60, *with* Deferred Pros. Agreement, *United States v. Snamprogetti*, *supra* note 60, ECF No. 3.

[196] *See* Press Release, General Electric Co., General Electric Agrees to Acquire InVision (Mar. 15, 2004), *available at* http://www.ge.com/files/usa/company/investor/downloads/sharpeye_press_release.pdf; Press Release, U.S. Dept. of Justice, InVision Tech. Inc. Enters into Agreement with the United States (Dec. 6, 2004), *available at* http://www.justice.gov/opa/pr/2004/December/04_crm_780.htm; Company News*; G.E. Gets InVision, a Maker of Bomb Detectors*, N.Y. Times, Dec. 7, 2004, at C4.

[197] Non-Pros. Agreement, In re InVision (Dec. 3, 2004), *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/invision-tech/12-03-04invisiontech-agree.pdf; Non-Pros. Agreement, In re General Elec. Co., (Dec. 3, 2004), *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/invision-tech/12-03-04invisiontech-agree-ge.pdf; Complaint, SEC v. GE InVision, Inc., f/k/a InVision Technologies, Inc., No. 05-cv-660, (N.D. Cal. Feb. 14, 2005), ECF No. 1, *available at* http://www.sec.gov/litigation/complaints/comp19078.pdf.

[198] *See* U.S. Dept. of Justice, FCPA Op. Release 08-02 (June 13, 2008), *available at* http://www.justice.gov/criminal/fraud/fcpa/opinion/2008/0802.pdf*; see also* Press Release, U.S. Dept. of Justice, Pfizer H.C.P. Corp. Agrees to Pay $15 Million Penalty to Resolve Foreign Bribery Investigation (Aug. 7, 2012) ("In the 18 months following its acquisition of Wyeth, Pfizer Inc., in consultation with the department, conducted a due diligence and investigative review of the Wyeth business operations and integrated Pfizer Inc.'s internal controls system into the former Wyeth business entities. The department considered these extensive efforts and the SEC resolution in its determination not to pursue a criminal resolution for the pre-acquisition improper conduct of Wyeth subsidiaries."), *available at* http://www.justice.gov/opa/pr/2012/August/12-crm-980.html.

[199] 18 U.S.C. § 2.

[200] In enacting the FCPA in 1977, Congress explicitly noted that "[t]he concepts of aiding and abetting and joint participation would apply to a violation under this bill in the same manner in which those concepts have always applied in both SEC civil actions and in implied private actions brought under the securities laws generally." H.R. Rep. No. 95-640, at 8.

[201] *Pinkerton* held that a conspirator may be found guilty of a substantive offense committed by a co-conspirator in furtherance of the conspiracy if the co-conspirator's acts were reasonably foreseeable. *See* Pinkerton v. United States, 328 U.S. 640, 647-48 (1946).

[202] *See* United States v. MacAllister, 160 F.3d 1304, 1307 (11th Cir. 1998); United States v. Winter, 509 F.2d 975, 982 (5th Cir. 1975).

[203] *See* Criminal Information, *United States v. Marubeni*, *supra* note 132; Criminal Information, *United States v. JGC Corp.*, *supra* note 60; Criminal Information, *United States v. Snamprogetti*, *supra* note 60; *see also* Criminal Information, *United States v. Technip*, *supra* note 132.

[204] Section 20(e) of the Exchange Act, "Prosecution of Persons Who Aid and Abet Violations," explicitly provides that, for purposes of a civil action seeking injunctive relief or a civil penalty, "any person that knowingly or recklessly provides substantial assistance to another person in violation of a provision of this chapter, or of any rule or regulation issued under this chapter, shall be deemed to be in violation of such provision to the same extent as the person to whom such assistance is provided." Section 20(e) of the Exchange Act, 15 U.S.C. § 78t(e).

[205] Under Section 21C(a) of the Exchange Act, the SEC may impose a cease-and-desist order through the SEC's administrative proceedings upon any person who is violating, has violated, or is about to violate any provision of the Exchange Act or any rule or regulation thereunder, and upon any other person that is, was, or would be a cause of the violation, due to an act or omission the person knew or should have known would contribute to such violation. Section 21C(a) of the Exchange Act,15 U.S.C. § 78u-3(a).

[206] *See* Complaint, *SEC v. Panalpina, Inc.*, *supra* note 68.

[207] 18 U.S.C. § 3282(a) provides: "Except as otherwise expressly provided by law, no person shall be prosecuted, tried, or punished for any offense, not capital, unless the indictment is found or the information is instituted within five years next after such offense shall have been committed."

[208] *See* Grunewald v. United States, 353 U.S. 391, 396-97 (1957) (holding government must prove conspiracy still existed and at least one overt act was committed within the statute of limitations); Fiswick v. United States, 329 U.S. 211, 216 (1946) ("The statute of limitations, unless suspended, runs from the last overt act during the existence of the conspiracy. The overt acts averred and proved may thus mark the duration, as well as the scope, of the conspiracy.") (citation omitted); *see generally* Julie N. Sarnoff, *Federal Criminal Conspiracy*, 48 Am. Crim. L. Rev. 663, 676 (Spring 2011).

[209] 18 U.S.C. § 3292.

[210] 28 U.S.C. § 2462.

[211] S. Rep. No. 95-114, at 3 (noting that, in the past, "corporate bribery has been concealed by the falsification of corporate books and records," that the accounting provisions "remove [] this avenue of coverup," and that "[t]aken together, the accounting requirements and criminal [anti-bribery] prohibitions . . . should effectively deter corporate bribery of foreign government officials").

[212] S. Rep. No. 95-114, at 7.

[213] Section 13(b)(2)(A) of the Exchange Act, 15 U.S.C. § 78m(b)(2)(A).

[214] Section 13(b)(2)(B) of the Exchange Act, 15 U.S.C. § 78m(b)(2)(B).

[215] The accounting provisions contain a narrow exemption related to national security and the protection of classified information. Under this "national security" provision, "no duty or liability [under Section 13(b)(2) of the Exchange Act] shall be imposed upon any person acting in cooperation with the head of any federal department or agency responsible for such matters if such act in cooperation with such head of a department or agency was done upon the specific, written directive of the head of such department or agency pursuant to Presidential authority to issue such directives." Section 13(b)(3) of the Exchange Act, 15 U.S.C. § 78m(b)(3). As Congress made clear, however, the exception is narrowly tailored and intended to prevent the disclosure of classified information. H.R. Rep. 94-831, at 11, *available at* http://www.justice.gov/criminal/fraud/fcpa/history/1977/corruptrpt-94-831.pdf.

[216] Section 13(b)(2)(A) of the Exchange Act, 15 U.S.C. § 78m(b)(2)(A).

[217] H.R. Rep. No. 94-831, at 10.

[218] *Id.*

[219] Section 13(b)(7) of the Exchange Act, 15 U.S.C. § 78m(b)(7).

[220] H.R. Rep. No. 100-576, at 917 (1988), *available athttp://www.justice.gov/criminal/fraud/fcpa/history/1988/tradeact-100-418.pdf.* Congress rejected the addition of proposed cost-benefit language to the definition "in response to concerns that such a statutory provision might be abused and weaken the accounting provisions at a time of increasing concern about audit failures and financial fraud and resultant recommendations by experts for stronger accounting practices and audit standards." *Id.*

[221] *See, e.g.*, Complaint, SEC v. Biomet, Inc., No. 12-cv-454 (D.D.C. Mar. 26, 2012), ECF No. 1 [hereinafter *SEC v. Biomet*], *available at* http://www.sec.gov/litigation/complaints/2012/comp22306.pdf; Criminal Information, United States v. Biomet, Inc., No. 12-cr-80 (D.D.C. Mar. 26, 2012) [hereinafter *United States v. Biomet*], *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/biomet/2012-03-26-biomet-information.pdf; Complaint, SEC v. Smith & Nephew Inc., No. 12-cv-187 (D.D.C. Feb. 6, 2012), ECF No. 1, *available at* http://www.sec.gov/litigation/complaints/2012/comp22252.pdf; Criminal Information, United States v. Smith & Nephew plc., No. 12-cr-30 (D.D.C. Feb. 6, 2012), ECF No. 1, *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/smith-nephew/2012-02-06-s-n-information.pdf; Complaint, *SEC v. Johnson & Johnson*, *supra* note 131; Criminal Information, *United States v. DePuy*, *supra* note 131; Complaint, SEC v. Maxwell Technologies Inc., No. 11-cv-258 (D.D.C. Jan. 31, 2011), ECF No. 1 [hereinafter *SEC v. Maxwell Technologies*], *available at* http://www.sec.gov/litigation/complaints/2011/comp21832.pdf; Criminal Information, United States v. Maxwell Technologies Inc., No. 11-cr-329 (S.D. Cal. Jan. 31, 2011), ECF No. 1, *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/maxwell/01-31-11maxwell-tech-info.pdf; Complaint, SEC v. Transocean, Inc., No. 10-cv-1891 (D.D.C. Nov. 4, 2010), ECF No. 1, *available at* http://www.sec.gov/litigation/complaints/2010/comp21725.pdf; Criminal Information, United States v. Transocean, Inc., No. 10-cr-768 (S.D. Tex. Nov. 4, 2010), ECF No. 1, *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/transocean-inc/11-04-10transocean-info.pdf.

[222] S. Rep. No. 95-114, at 7.

[223] Section 13(b)(2)(B) of the Exchange Act, 15 U.S.C. § 78m(b)(2)(B).

[224] Section 13(b)(7) of the Exchange Act, 15 U.S.C. § 78m(b)(7).

[225] *See* Complaint, *SEC v. Siemens AG*, *supra* note 48; Criminal Information, *United States v. Siemens AG*, *supra* note 48.

[226] Complaint, *SEC v. Siemens AG*, *supra* note 48; Criminal Information, *United States v. Siemens AG*, *supra* note 48; Press Release, U.S. Dept. of Justice, Siemens AG and Three Subsidiaries Plead Guilty to Foreign Corrupt Practices Act Violations and Agree to Pay $450 Million in Combined Criminal Fines (Dec. 15, 2008), *available at* http://www.justice.gov/opa/pr/2008/December/08-crm-1105.html.

[227] *See, e.g.*, Complaint, *SEC v. Biomet*, *supra* note 221 (bribes paid to government healthcare providers in which phony invoices were used to justify payments and bribes were falsely recorded as "consulting fees" or "commissions" in company's books and records); Criminal Information, *United States v. Biomet*, *supra* note 221 (same); *SEC v. Alcatel-Lucent*, *supra* note 48 (bribes paid to foreign officials to secure telecommunications contracts where company lacked proper internal controls and permitted books and records to falsified); *United States v. Alcatel-Lucent, S.A.*, *supra* note 48 (same).

[228] Complaint, *SEC v. Daimler AG*, *supra* note 48; Criminal Information, *United States v. Daimler AG*, *supra* note 48.

[229] *Id.*

[230] *Id.*

[231] *Id.*

[232] *Id.*

[233] *Id.*

[234] *See, e.g.*, Complaint, *SEC v. Tyco Int'l*, *supra* note 9; Complaint, SEC v. Willbros, No. 08-cv-1494 (S.D. Tex. May 14, 2008), ECF No. 1, *available at* http://www.sec.gov/litigation/complaints/2008/comp20571.pdf.

[235] *See, e.g.*, Complaint, *SEC v. Siemens AG*, *supra* note 48; Complaint, *SEC v. York Int'l Corp.*, *supra* note 115; Complaint, *SEC v. Textron*, *supra* note 115; Criminal Information, United States v. Control Components, Inc., No. 09-cr-162 (C.D. Cal. July 22, 2009), ECF No. 1 [hereinafter *United States v. Control Components*], *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/control-inc/07-22-09cci-info.pdf; Criminal Information, United States v. SSI Int'l Far East, Ltd., No. 06-cr-398, ECF No. 1 (D. Or. Oct. 10, 2006) [hereinafter *United States v. SSI Int'l*], *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/ssi-intl/10-10-06ssi-information.pdf.

[236] *See, e.g.*, Complaint, *SEC v. El Paso Corp.*, *supra* note 187; Complaint, *SEC v. Innospec*, *supra* note 79; Complaint, SEC v. Chevron Corp., 07-cv-10299 (S.D.N.Y. Nov. 14, 2007), ECF No. 1, *available at* http://www.sec.gov/litigation/complaints/2007/comp20363.pdf.

[237] Plea Agreement, *United States v. Stanley*, *supra* note 8; Plea Agreement, *United States v. Sapsizian*, *supra* note 8.

[238] *See* Complaint, *SEC v. Maxwell Technologies*, *supra* note 221.

[239] *See* Complaint, *SEC v. Willbros Group*, *supra* note 9.

[240] 15 U.S.C. § 7201, *et seq.*

[241] Exchange Act Rule 13a-15, 17 C.F.R. § 240.13a-15; Exchange Act Rule 15d-15, 17 C.F.R. § 240.15d-15; Item 308 of Regulation S-K, 17 C.F.R. § 229.308; Item 15, Form 20-F, *available at* http://www.sec.gov/about/forms/form20-f.pdf; General Instruction (B), Form 40-F (for foreign private issuers), *available at* http://www.sec.gov/about/forms/form40-f.pdf.

[242] *See* U.S. Sec. and Exchange Comm., Commission Guidance Regarding Management's Report on Internal Control over Financial Reporting Under Section 13(a) or 15(d) of the Securities Exchange Act of 1934, Release No. 33-8810 (June 27, 2007), *available at* http://www.sec.gov/rules/interp/2007/33-8810.pdf.

[243] *Id.*

[244] Foreign Corrupt Practices Act of 1977, Pub. L. No. 95-213, § 102, 91 Stat. 1494 (1977).

[245] *See supra* note 48; *SEC v. Technip*, *supra* note 132, (French company); *United States v. Technip*, *supra* note 132, (same); *see also* Admin. Proceeding Order, In re Diageo plc, Exchange Act Release No. 64978 (SEC July 27, 2011) (UK company), *available at* http://www.sec.gov/litigation/admin/2011/34-64978.pdf; Admin. Proceeding Order, In re Statoil, ASA, Exchange Act Release No. 54599 (SEC May 29, 2009) (Norwegian company), *available at* http://www.sec.gov/litigation/admin/2006/34-54599.pdf; Criminal Information, United States v. Statoil, ASA, No. 06-cr-960 (S.D.N.Y. Oct. 13, 2006) (same), *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/statoil-asa-inc/10-13-09statoil-information.pdf.

[246] Although private companies are not covered by the books and records and internal controls provisions of the FCPA and do not fall within SEC's jurisdiction, such companies generally are required by federal and state tax laws and state corporation laws to maintain accurate books and records sufficient to properly calculate taxes owed. Further, most large private companies maintain their books and records to facilitate the preparation of financial statements in conformity with GAAP to comply with financial institutions' lending requirements.

[247] *See SEC v. RAE Sys. Inc.*, *supra* note 92; *In re RAE Sys. Inc.*, *supra* note 92.

[248] *See* Section 13(b)(6) of the Exchange Act, 15 U.S.C. § 78m(b) (6), which provides that where an issuer "holds 50 per centum or less of the voting power with respect to a domestic or foreign firm," the issuer must "proceed in good faith to use its influence, to the extent reasonable under the issuer's circumstances, to cause such domestic or foreign firm to devise and maintain a system of internal accounting controls consistent with [Section 13(b)(2)]."

[249] *See* 15 U.S.C. § 78m(b)(6). Congress added the language in subsection 78m(b)(6) to the FCPA in 1988, recognizing that "it is unrealistic to expect a minority owner to exert a disproportionate degree of influence over the accounting practices of a subsidiary." H.R. Rep. No. 100-576, at 917. The Conference Report noted that, with respect to minority owners, "the amount of influence which an issuer may exercise necessarily varies from case to case. While the relative degree of ownership is obviously one factor, other factors may also be important in determining whether an issuer has demonstrated good-faith efforts to use its influence." *Id.*; *see also* S. Rep. No. 100-85, at 50.

[250] Section 20(e) of the Exchange Act, titled "Prosecution of Persons Who Aid and Abet Violations," explicitly provides that for purposes of a civil action seeking injunctive relief or a civil penalty, "any person that knowingly or recklessly provides substantial assistance to another person in violation of a provision of this title, or of any rule or regulation issued under this title, shall be deemed to be in violation of such provision to the same extent as the person to whom such assistance is provided." *See* Section 20(e) of the Exchange Act, 15 U.S.C. § 78t(e).

[251] *See* Complaint at 11-12, *SEC v. Elkin*, *supra* note 50, ECF 1.

[252] *SEC v. Elkin*, *supra* note 50, ECF 6-9 (final judgments).

[253] *See, e.g.*, Complaint, SEC v. Nature's Sunshine Products, Inc., *et al.*, No. 09-cv-672 (D. Utah, July 31, 2009), ECF No. 2, *available at* http://www.sec.gov/litigation/litreleases/2009/lr21162.htm.

[254] *See* Admin. Proceeding Order, In re Watts Water Technologies, Inc. and Leesen Chang, Exchange Act Release No. 65555 (SEC Oct. 13, 2011), *available at* http://www.sec.gov/litigation/admin/2011/34-65555.pdf.

[255] *Id.* at 2, 4, 6-7.

[256] Exchange Act Rule 13b2-1, 17 C.F.R. § 240.13b2-1.

[257] 15 U.S.C. § 78m(b)(5).

[258] Section 3(a)(9) of the Exchange Act, 15 U.S.C. § 78c(a)(9).

[259] Exchange Act Rule 13b2-2, 17 C.F.R. § 240.13b2-2

[260] Complaint, SEC v. Jennings, No. 11-cv-1444 (D.D.C. Jan. 24, 2011), ECF No. 1, *available at* http://www.sec.gov/litigation/complaints/2011/comp21822.pdf.

[261] Complaint, *id.*, ECF No. 1; Final Judgment, *id.*, ECF No. 3.

[262] Serious Fraud Office, Innospec Ltd: Former CEO admits bribery to falsify product tests (July 30, 2012), *available at* http://www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2012/innospec-ltd--former-ceo-admits-bribery-to-falsify-product-tests.aspx.

[263] 15 U.S.C. § 78m(b)(4)-(5). Congress adopted this language in 1988 in

order to make clear that, consistent with enforcement policy at the time, criminal penalties would not be imposed "for inadvertent or insignificant errors in books and records, or inadvertent violations of accounting controls." *See* S. Rep. No. 100-85, at 49; H.R. Rep. No. 100-576, at 916 ("The Conferees intend to codify current Securities and Exchange Commission (SEC) enforcement policy that penalties not be imposed for insignificant or technical infractions or inadvertent conduct.").

[264] 15 U.S.C. § 78ff(a).

[265] *See United States v. Alcatel-Lucent, S.A., supra* note 48; *see also United States v. Alcatel-Lucent France, supra* note 56.

[266] *See* Deferred Prosecution Agreement, *United States v. Alcatel-Lucent, S.A., supra* note 48, ECF No. 10, *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/alcatel-etal/02-22-11alcatel-dpa.pdf.

[267] *See* Plea Agreement, *United States v. Siemens AG, supra* note 48, ECF No. 14, *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/siemens/12-15-08siemensakt-plea.pdf.

[268] *See* Minute Entry of Guilty Plea, *United States v. Peterson, supra* note 8, ECF 13; *see also* Press Release, U.S. Dept. of Justice, Former Morgan Stanley Managing Director Pleads Guilty for Role in Evading Internal Controls Required by FCPA (Apr. 23, 2012), *available at* http://www.justice.gov/opa/pr/2012/April/12-crm-534.html.

[269] *See* Criminal Information, United States v. Baker Hughes Svcs. Int'l, No. 07-cr-129 (S.D. Tex. Apr. 11, 2007), ECF No. 1, *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/baker-hughs/04-11-07bakerhughesintl-info.pdf.

[270] *See United States v. Panalpina, Inc., supra* note 68.

[271] *Id.*

[272] *See* FASB Statement of Financial Accounting Concepts No. 2, ¶¶ 63-80.

[273] PCAOB Auditing Standard No. 12 and PCAOB AU Section 325.

[274] *See* Section 10A of the Exchange Act, 15U.S.C. § 78j-1.

[275] 18 U.S.C. § 1952.

[276] *See, e.g.*, *United States v. Nexus Technologies, supra* note 53; Criminal Information, United States v. Robert Richard King, *et al.*, No. 01-cr-190 (W.D. Mo. June 27, 2001), *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/kingr-etal/05-03-02king-robert-indict.pdf; Superseding Indictment, *United States v. Mead, supra* note 44; Criminal Information, United States v. Saybolt North America Inc., *et al.*, No. 98-cr-10266 (D. Mass. Aug. 18, 1998), *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/saybolt/08-10-98saybolt-info.pdf.

[277] *See* Second Superseding Indictment, United States v. Kozeny, No. 05-cr-518 (S.D.N.Y. May 26, 2009), ECF No. 203, *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/kozenyv/05-26-09bourke2nd-supersed-indict.pdf; Judgment, United States v. Bourke, No. 05-cr-518 (S.D.N.Y. Nov. 12, 2009), ECF No. 253, *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/kozenyv/11-12-09bourke-judgment.pdf.

[278] Plea Agreement, *United States v. Control Components, supra* note 235, ECF No. 7; *see also* Order, *United States v. Carson, supra* note 119, ECF No. 440 (denying motion to dismiss counts alleging Travel Act violations), *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/carsons/2011-09-20-carson-minutes-denying-motion-to-dismiss.pdf.

[279] *See, e.g.*, Criminal Information, *United States v. Esquenazi, supra* note 44; Criminal Information, *United States v. Green, supra* note 44; Criminal Information, United States v. General Elec. Co., No. 92-cr-87 (S.D. Ohio July 22, 1992), *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/general-electric/1992-07-22-general-electric-information.pdf.

[280] Foreign officials may "not be charged with violating the FCPA itself, since the [FCPA] does not criminalize the receipt of a bribe by a foreign official." United States v. Blondek, 741 F.Supp. 116, 117 (N.D. Tex. 1990), *aff'd* United States v. Castle, 925 F.2d 831 (5th Cir. 1991) ("We hold that foreign officials may not be prosecuted under 18 U.S.C. § 371 for conspiring to violate the FCPA."). Foreign officials, however, can be charged with violating the FCPA when the foreign official acts as an intermediary of a bribe payment. *See, e.g.*, Information, United States v. Basu, No. 02-cr-475 (D.D.C. Nov. 26, 2002) (World Bank employee charged with wire fraud and FCPA violations for facilitating bribe payments to another World Bank official and Kenyan government official), *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/basu/11-26-02basu-info.pdf; Information, United States v. Sengupta, No. 02-cr-40 (D.D.C. Jan. 30, 2002), *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/sengupta/01-30-02sengupta-info.pdf.

[281] *See, e.g.*, Judgments, *United States v. Esquenazi, supra* note 44, ECF Nos. 182, 816, 824 (judgments against foreign official defendants).

[282] Criminal Information, *United States v. SSI Int'l, supra* note 235 (alleging violations of 18 U.S.C. §§ 1343, 1346); Plea Agreement, *United States v. SSI Int'l, supra* note 235, (Oct. 10, 2006), *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/control-inc/07-24-09cci-plea-agree.pdf.

[283] *See* Ex-Im Bank, Form of Exporter's Certificate, EBD-M-56 (Jan. 2007), *available at* http://www.exim.gov/pub/ins/pdf/ebd-m-56.pdf.

[284] *See* 18 U.S.C. § 1001.

[285] 22 C.F.R. §§ 130.2, 130.9.

[286] For example, in *United States v. BAE Systems plc*, BAE pleaded guilty to conspiring to defraud the United States by impairing and impeding its lawful functions, to making false statements about its FCPA compliance program, and to violating the AECA and ITAR. BAE paid a $400 million fine and agreed to an independent corporate monitor to ensure compliance with applicable anti-corruption and export control laws. Criminal Information and Plea Agreement, United States v. BAE Sys. plc, No. 10-cr-35 (D.D.C. Mar. 1, 2010), ECF Nos.1, 8, *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/bae-system/02-01-10baesystems-info.pdf and http://www.justice.gov/criminal/fraud/fcpa/cases/bae-system/03-01-10baesystems-plea-agree.pdf. In an action based on the same underlying facts as the criminal guilty plea, BAE entered a civil settlement with the Directorate of Defense Trade Controls for violations of AECA and ITAR, including over 2500 ITAR violations that included a failure to report the payment of fees or commissions associated with defense transactions and failure to maintain records involving ITAR-controlled transactions. BAE paid $79 million in penalties, and the State Department imposed a "policy of denial" for export licenses on three BAE subsidiaries involved in the wrongful conduct. Consent Agreement between BAE Sys. plc and Defense Trade Controls at 17-20, Bureau of Political-Military Affairs, U.S. Dept. of State (May 16, 2011), *available at* http://www.pmddtc.state.gov/compliance/consent_agreements/pdf/BAES_CA.pdf; Proposed Charging Letter, In re Investigation of BAE Systems plc Regarding Violations of the Arms Export Control Act and the International Traffic in Arms Regulations, U.S. Dept. of State (May 2011), *available at* http://www.pmddtc.state.gov/compliance/consent_agreements/pdf/BAES_PCL.pdf.

[287] 26 U.S.C. § 162(c)(1); *see also* Plea Agreement, United States v. Smith, No. 07-cr-69 (C.D. Cal. Sept. 3, 2009), ECF No. 89, *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/smithl/09-03-09smithl-plea-agree.pdf; Criminal Information, *United States v. Titan Corp., supra* note 185.

[288] *See* USAM § 9-27.000.

[289] *See* USAM § 9-27.420 (setting forth considerations to be weighed when determining whether it would be appropriate to enter into plea agreement).

[290] *See* USAM § 9-28.000 *et seq.*

[291] *See* USAM § 9-28.710 (discussing attorney-client and work product protections).

[292] *See* http://www.sec.gov/divisions/enforce/enforcementmanual.pdf.

[293] *See* USAM§ 9-28.300.A; *see also* USAM § 9-28.700.B (explaining benefits of cooperation for both government and corporation).

[294] *See* USAM § 9-28.900 (discussing restitution and remediation). The commentary further provides that prosecutors should consider and weigh whether the corporation appropriately disciplined wrongdoers and a corporation's efforts to reform, including its quick recognition of the flaws in the program and its efforts to improve the program. *Id.*

[295] *See* USAM §§ 9-27.230, 9-27.420.

[296] U.S. Sentencing Guidelines § 8B2.1(b)(7) (2011).

[297] *Id.* § 8C2.5(f)(2) (2011).

[298] U.S. Sec. and Exchange Comm., Report of Investigation Pursuant to Section 21(a) of the Securities Exchange Act of 1934 and Commission Statement on the Relationship of Cooperation to Agency Enforcement Decisions, SEC Rel. Nos. 34-44969 and AAER-1470 (Oct. 23, 2001) [hereinafter *Seaboard* Report] *available at* http://www.sec.gov/litigation/investreport/34-44969.htm.

[299] U.S. Sec. and Exchange Comm., Policy Statement Concerning Cooperation by Individuals in its Investigations and Related Enforcements Actions, 17 C.F.R. § 202.12 (Jan. 10, 2010), *available at* http://www.sec.gov/rules/

policy/2010/34-61340.pdf.

[300] *See* U.S. Sentencing Guidelines at § 8B2.1(a)(2).

[301] U.S. Sentencing Guidelines § 8B2.1(b).

[302] *See generally* Debbie Troklus, *et al.*, Compliance 101: How to build and maintain an effective compliance and ethics program, Society of Corp. Compliance and Ethics (2008) 3-9 [hereinafter Compliance 101] (listing reasons to implement compliance program, including protecting company's reputation, creating trust between management and employees, preventing false statements to customers, creating efficiencies and streamlining processes, detecting employee and contractor fraud and abuse, ensuring high-quality products and services, and providing "early warning" system of inappropriate actions); Transparency Int'l, Business Principles for Countering Bribery: Small and Medium Enterprise (SME) Edition 5 (2008) (citing benefits of anti-bribery program like protecting reputation, creating record of integrity enhances opportunities to acquire government business, protecting company assets otherwise squandered on bribes); Mark Pieth, Harmonising Anti-Corruption Compliance: The OECD Good Practice Guidance 45-46 (2011) [hereinafter Harmonising Anti-Corruption Compliance] (citing need for compliance program to prevent and detect in-house risks, such as workplace security or conflicts of interest, and external risks, like anti-trust violations, embargo circumvention, environmental hazards, and money laundering).

[303] Debarment authorities, such as the Department of Defense or the General Services Administration, may also consider a company's compliance program when deciding whether to debar or suspend a contractor. Specifically, the relevant regulations provide that the debarment authority should consider "[w]hether the contractor had effective standards of conduct and internal control systems in place at the time of the activity which constitutes cause for debarment or had adopted such procedures prior to any Government investigation of the activity cited as a cause for debarment," and "[w]hether the contractor has instituted or agreed to institute new or revised review and control procedures and ethics training programs." 48 C.F.R. § 9.406-1(a).

[304] *Seaboard* Report, *supra* note 298; U.S. Sec. and Exchange Comm., Report of Investigation Pursuant to Section 21(a) of the Securities Exchange Act of 1934 and Commission Statement on the Relationship of Cooperation to Agency Enforcement Decisions, SEC Rel. No. 44969 (Oct. 23, 2001), *available at* http://www.sec.gov/litigation/investreport/34-44969.htm.

[305] USAM § 9-28.300. When evaluating the pervasiveness of wrongdoing within the corporation, prosecutors are advised that while it may be appropriate to charge a corporation for minor misconduct where the wrongdoing was pervasive, "it may not be appropriate to impose liability upon a corporation, *particularly one with a robust compliance program in place*, under a strict *respondeat superior* theory for the single isolated act of a rogue employee." *Id.* § 9-28.500.A (emphasis added). Prosecutors should also consider a company's compliance program when examining any remedial actions taken, including efforts to implement an effective compliance program or to improve an existing one. As the commentary explains, "although the inadequacy of a corporate compliance program is a factor to consider when deciding whether to charge a corporation, that corporation's quick recognition of the flaws in the program and its efforts to improve the program are also factors to consider as to appropriate disposition of a case." *Id.* § 9-28.900.B. Finally, the Principles of Federal Prosecution of Business Organizations provides that prosecutors should consider the existence and effectiveness of the corporation's pre-existing compliance program in determining how to treat a corporate target. *Id.* § 9-28.800.

[306] *See* USAM § 9-28.800.B; *see also* U.S. Sentencing Guidelines § 8B2.1(a) (2011) ("The failure to prevent or detect the instant offense does not necessarily mean that the program is not generally effective in preventing and detecting criminal conduct.").

[307] *See* Press Release, U.S. Dept. of Justice, Former Morgan Stanley Managing Director Pleads Guilty for Role in Evading Internal Controls Required by FCPA (Apr. 25, 2012) (declining to bring criminal case against corporate employer that "had constructed and maintained a system of internal controls, which provided reasonable assurances that its employees were not bribing government officials"), *available at* http://www.justice.gov/opa/pr/2012/April/12-crm-534.html; Press Release, U.S. Sec. and Exchange Comm., SEC Charges Former Morgan Stanley Executive with FCPA Violations and Investment Adviser Fraud, No. 2012-78 (Apr. 25, 2012) (indicating corporate employer was not charged in the matter and had "cooperated with the SEC's inquiry and conducted a thorough internal investigation to determine the scope of the improper payments and other misconduct involved"), *available at* http://www.sec.gov/news/press/2012/2012-78.htm.

[308] *See* USAM § 9-28.800.B.

[309] *See, e.g.*, Int'l Chamber of Commerce, ICC Rules on Combating Corruption (2011) [hereinafter ICC Rules on Combating Corruption], *available at* http://www.iccwbo.org/uploadedFiles/ICC/policy/business_in_society/Statements/ICC_Rules_on_Combating_Corruption_2011edition.pdf; Transparency Int'l, Business Principles for Countering Bribery (2d ed. 2009) [hereinafter Business Principles for Countering Bribery], *available at* http://www.transparency.org/global_priorities/private_sector/business_principles/; United Kingdom Ministry of Justice, The Bribery Act of 2010, Guidance about procedures which relevant commercial organisations can put into place to prevent persons associated with them from bribing (2010), *available at* http://www.justice.gov.uk/downloads/legislation/bribery-act-2010-guidance.pdf; World Bank Group, Integrity Compliance Guidelines (2011) [hereinafter Integrity Compliance Guidelines], *available at* http://siteresources.worldbank.org/INTDOII/Resources/Integrity_Compliance_Guidelines.pdf; Asia-Pacific Economic Cooperation, APEC Anti-corruption Code of Conduct for Business (2007) [hereinafter APEC Anti-corruption Code], *available at* http://www.apec.org/Groups/SOM-Steering-Committee-on-Economic-and-Technical-Cooperation/Task-Groups/~/media/Files/Groups/ACT/07_act_codebrochure.ashx; Int'l Chamber of Commerce, Transparency Int'l, United Nations Global Compact, and World Economic Forum, Resisting Extortion and Solicitation in International Transactions: A Company Tool for Employee Training (2011), *available at* http://www3.weforum.org/docs/WEF_PACI_RESIST_Report_2011.pdf; Int'l Chamber of Commerce, et al., Clean Business Is Good Business, *available at* http://www3.weforum.org/docs/WEF_PACI_BusinessCaseFightingCorruption_2011.pdf; World Economic Forum, Partnering Against Corruption – Principles for Countering Bribery (2009) [hereinafter Partnering Against Corruption], *available at* http://www3.weforum.org/docs/WEF_PACI_Principles_2009.pdf; Working Group on Bribery, OECD, Good Practice Guidance on Internal Controls, Ethics, and Compliance 2010, [hereinafter OECD Good Practice Guidance] a*vailable at* http://www.oecd.org/dataoecd/5/51/44884389.pdf; U.N. Global Compact, The Ten Principles [hereinafter The Ten Principles] *available at* http://www.unglobalcompact.org/aboutTheGC/TheTenPrinciples/index.html.

[310] This is also reflected in the *Sentencing Guidelines*, which recognizes that no single, formulaic set of requirements should be imposed, but instead focuses on a number of factors like applicable industry practice or the standards called for by any applicable governmental regulation, the size of the organization, and whether the organization has engaged in similar misconduct in the past. *See* U.S. Sentencing Guidelines § 8B2.1 & app. note 2 (2011).

[311] This was underscored by then-SEC Commissioner Cynthia Glassman in 2003 in a speech on the SEC's implementation of the Sarbanes-Oxley Act: "[T]he ultimate effectiveness of the new corporate governance rules will be determined by the 'tone at the top.' Adopting a code of ethics means little if the company's chief executive officer or its directors make clear, by conduct or otherwise, that the code's provisions do not apply

to them. . . . Corporate officers and directors hold the ultimate power and responsibility for restoring public trust by conducting themselves in a manner that is worthy of the trust that is placed in them." Cynthia Glassman, SEC Implementation of Sarbanes-Oxley: The New Corporate Governance, Remarks at National Economists Club (April 7, 2003), *available at* http://www.sec.gov/news/speech/spch040703cag.htm .

[312] Indeed, research has found that "[e]thical culture is the single biggest factor determining the amount of misconduct that will take place in a business." Ethics Resource Center, 2009 National Business Ethics Survey: Ethics in the Recession (2009), at 41. Metrics of ethical culture include ethical leadership (tone at the top), supervisor reinforcement of ethical behavior (middle management reinforcement), and peer commitment (supporting one another in doing the right thing). Ethics Resource Center, 2011 National Business Ethics Survey: Workplace Ethics in Transition (2012) at 19. Strong ethical cultures and strong ethics and compliance programs are related, as data show that a well-implemented program helps lead to a strong ethical culture. *Id.* at 34. "Understanding the nature of any gap between the desired culture and the actual culture is a critical first step in determining the nature of any ethics-based risks inside the organization." David Gebler, *The Role of Culture* at 1.7, *in* Society of Corporate Compliance and Ethics, The Complete Compliance and Ethics Manual (2011). To create an ethical culture, attention must be paid to norms at all levels of an organization, including the "tone at the top," "mood in the middle," and "buzz at the bottom." *Id.* 1.9-1.10.

[313] *See, e.g.*, U.S. Sentencing Guidelines § 8B2.1(2)(B)-(C) (2011).

[314] *Id.*

[315] *Id.*

[316] *Id.*

[317] *See, e.g.*, Ethics and Compliance Officer Association Foundation, The Ethics and Compliance Handbook: A Practical Guide From Leading Organizations (2008) at 13-26 [hereinafter The Ethics and Compliance Handbook].

[318] *See* U.S. Sentencing Guidelines § 8B2.1(b)(4) (2011).

[319] *See* U.S. Sentencing Guidelines § 8B2.1(b)(6) (2011) ("The organization's compliance and ethics program shall be promoted and enforced consistently throughout the organization through (A) appropriate incentives to perform in accordance with the compliance and ethics program; and (B) appropriate disciplinary measures for engaging in criminal conduct and for failing to take reasonable steps to prevent or detect criminal conduct.").

[320] *See, e.g.*, Joseph E. Murphy, Society of Corp. Compliance and Ethics, Using Incentives in Your Compliance and Ethics Program (2011) at 1; The Ethics and Compliance Handbook, *supra* note 317, at 111-23.

[321] Stephen M. Cutler, Director, Division of Enforcement, SEC, *Tone at the Top: Getting It Right*, Second Annual General Counsel Roundtable (Dec. 3, 2004), *available at* http://www.sec.gov/news/speech/spch120304smc.htm.

[322] *See, e.g.*, ICC Rules on Combating Corruption, *supra* note 309, at 8.

[323] *See, e.g.* U.S. Sentencing Guidelines § 8B2.1(b)(5)(C); Compliance 101, *supra* note 302, at 30-33.

[324] Corporate Board Member/FTI Consulting 2009 Legal Study, *Buckle Up. Boards and General Counsel May Face a Bumpy Ride in 2009*, at 5 ("Interestingly, while 67% of general counsel say their company is subject to compliance under the FCPA, 64% of those say there is room for improvement in their FCPA training and compliance programs.").

[325] *See* U.S. Sentencing Guidelines § 8B2.1(b)(5)(B) ("The organization shall take reasonable steps . . . to evaluate periodically the effectiveness of the organization's compliance and ethics program.").

[326] *See, e.g.*, Compliance 101, *supra* note 302, at 60-61; The Ethics and Compliance Handbook, *supra* note 317, at 155-60; Business Principles for Countering Bribery, *supra* note 309, at 14.

[327] *See, e.g.,* Michael M. Mannix and David S. Black., *Compliance Issues in M&A: Performing Diligence on the Target's Ethics and Compliance Program* at 5.71-5.81, *in* Society of Corporate Compliance and Ethics, The Complete Compliance and Ethics Manual (2011).

[328] Complaint, SEC v. Syncor International Corp., *supra* note 190; Criminal Information, United States v. Syncor Taiwan, Inc., *supra* note 189.

[329] U.S. Dept. of Justice, FCPA Op. Release 08-02 (June 13, 2008), *available at* http://justice.gov/criminal/fraud/fcpa/opinion/2008/0802.pdf.

[330] Complaint, *SEC v. Rae Sys., Inc.*, *supra* note 92; Non-Pros. Agreement, *In re Rae Sys. Inc.*, *supra* note 92.

[331] U.S. Dept. of Commerce, Business Ethics: A Manual for Managing a Responsible Business Enterprise in Emerging Market Economies (2004), *available at* http://www.ita.doc.gov/goodgovernance/adobe/bem_manual.pdf.

[332] U.S. Dept. of State, Fighting Global Corruption: Business Risk Management (2d ed. 2001), *available at* http://www.ogc.doc.gov/pdfs/Fighting_Global_Corruption.pdf.

[333] *See* Harmonising Anti-Corruption Compliance, *supra* note 302, at 46 ("Anti-corruption compliance is becoming more and more harmonised worldwide.").

[334] OECD Good Practice Guidance, *supra* note 309.

[335] APEC Anti-corruption Code, *supra* note 309.

[336] ICC Rules on Combating Corruption, *supra* note 309.

[337] Business Principles for Countering Bribery, *supra* note 309.

[338] The Ten Principles, *supra* note 309.

[339] Integrity Compliance Guidelines, *supra* note 309.

[340] Partnering Against Corruption, *supra* note 309.

[341] 15 U.S.C. §§ 78dd-2(g)(1)(A), 78dd-3(e)(1)(A), 78ff(c)(1)(A).

[342] 15 U.S.C. §§ 78dd-2(g)(2)(A), 78dd-3(e)(2)(A), 78ff(c)(2)(A).

[343] 15 U.S.C. § 78ff(a).

[344] 15 U.S.C. § 78ff(a).

[345] 18 U.S.C. § 3571(d); *see Southern Union v. United States*, 132 S. Ct. 2344, 2350-51 & n.4 (2012).

[346] 15 U.S.C. §§ 78dd-2(g)(3), 78dd-3(e)(3), 78ff(c)(3).

[347] The U.S. Sentencing Guidelines are promulgated by the U.S. Sentencing Commission:

> The United States Sentencing Commission ("Commission") is an independent agency in the judicial branch composed of seven voting and two non-voting *ex-officio* members. Its principal purpose is to establish sentencing policies and practices for the federal criminal justice system that will assure the ends of justice by promulgating detailed guidelines prescribing the appropriate sentences for offenders convicted of federal crimes. The Guidelines and policy statements promulgated by the Commission are issued pursuant to Section 994(a) of Title 28, United States Code.

U.S. Sentencing Guidelines § 1A1.1 (2011).

[348] *Id.* at ch. 3-5.

[349] *Id.* § 2C1.1.

[350] *Id.* § 2C1.1(b).

[351] *Id.* § 3B1.1.

[352] *Id.* at ch. 4, § 5A.

[353] *Id.* § 2B1.1(b)(10)(B), 2B1.1(b)(18)(A).

[354] *Id.* § 8C2.4 (a).

[355] *Id.* § 8C2.5.

[356] *Id.* § 8C2.5(f), 8C2.5(g).

[357] DOJ has exercised this civil authority in limited circumstances in the last thirty years. *See, e.g.*, United States & SEC v. KPMG Siddharta Siddharta & Harsono, *et al.*, No. 01-cv-3105 (S.D. Tex. 2001) (entry of injunction barring company from future FCPA violations based on allegations that company paid bribes to Indonesian tax official in order to reduce the company's tax assessment); United States v. Metcalf & Eddy, Inc., No. 99-cv-12566 (D. Mass. 1999) (entry of injunction barring company from future FCPA violations and requiring maintenance of compliance program based on allegations that it paid excessive marketing and promotional expenses such as airfare, travel expenses, and per diem to an Egyptian official and his family); United States v. American Totalisator Co. Inc., No. 93-cv-161 (D. Md. 1993) (entry of injunction barring company from future FCPA violations based on allegations that it paid money to its Greek agent with knowledge that all or some of the money paid would be offered, given, or promised to Greek foreign officials in connection with sale of company's system and spare parts); United States v. Eagle Bus Manufacturing, Inc., No. 91-cv-171 (S.D. Tex. 1991) (entry of injunction barring company from future FCPA violations based on allegations that employees of the company participated in

bribery scheme to pay foreign officials of Saskatchewan's state-owned transportation company $50,000 CAD in connection with sale of buses); United States v. Carver, *et al.*, No. 79-cv-1768 (S.D. Fla. 1979) (entry of injunction barring company from future FCPA violations based on allegations that Carver and Holley, officers and shareholders of Holcar Oil Corp., paid $1.5 million to Qatar foreign official to secure an oil drilling concession agreement); United States v. Kenny, *et al.*, No. 79-cv-2038 (D.D.C. 1979) (in conjunction with criminal proceeding, entry of injunction barring company from future FCPA violations for providing illegal financial assistance to political party to secure renewal of stamp distribution agreement).

[358] 15 U.S.C. §§ 78dd-2(g)(1)(B), 78dd-3(e)(1)(B), 78ff(c)(1)(B); *see also* 17 C.F.R. § 201.1004 (providing adjustments for inflation).

[359] 15 U.S.C. §§ 78dd-2(g)(2)(B), 78dd-3(e)(2)(B), 78ff(c)(2)(B); *see also* 17 C.F.R. § 201.1004 (providing adjustments for inflation).

[360] 15 U.S.C. §§ 78dd-2(g)(3), 78dd-3(e)(3), 78ff(c)(3); *see also* 17 C.F.R. § 201.1004 (providing adjustments for inflation).

[361] Section 21(B)(b) of the Exchange Act, 15 U.S.C. § 78u(d)(3); *see also* 17 C.F.R. § 201.1004 (providing adjustments for inflation).

[362] *See* Securities Enforcement Remedies and Penny Stock Reform Act of 1990, Pub. L. No. 101-429, 104 Stat. 931 §§ 202, 301, 401, and 402 (codified in scattered sections of Title 15 of the United States Code).

[363] 48 C.F.R. §§ 9.406-2, 9.407-2.

[364] 48 C.F.R. § 9.402(b).

[365] *See* 48 C.F.R. §§ 9.406-1, 9.407-1(b)(2). Section 9.406-1 sets forth the following non-exhaustive list of factors:

> (1) Whether the contractor had effective standards of conduct and internal control systems in place at the time of the activity which constitutes cause for debarment or had adopted such procedures prior to any Government investigation of the activity cited as a cause for debarment.
> (2) Whether the contractor brought the activity cited as a cause for debarment to the attention of the appropriate Government agency in a timely manner.
> (3) Whether the contractor has fully investigated the circumstances surrounding the cause for debarment and, if so, made the result of the investigation available to the debarring official.
> (4) Whether the contractor cooperated fully with Government agencies during the investigation and any court or administrative action.
> (5) Whether the contractor has paid or has agreed to pay all criminal, civil, and administrative liability for the improper activity, including any investigative or administrative costs incurred by the Government, and has made or agreed to make full restitution.
> (6) Whether the contractor has taken appropriate disciplinary action against the individuals responsible for the activity which constitutes cause for debarment.
> (7) Whether the contractor has implemented or agreed to implement remedial measures, including any identified by the Government.
> (8) Whether the contractor has instituted or agreed to institute new or revised review and control procedures and ethics training programs.
> (9) Whether the contractor has had adequate time to eliminate the circumstances within the contractor's organization that led to the cause for debarment.
> (10) Whether the contractor's management recognizes and understands the seriousness of the misconduct giving rise to the cause for debarment and has implemented programs to prevent recurrence.

[366] 48 C.F.R. § 9.406-1(a).

[367] Exec. Order No. 12,549, 51 Fed. Reg. 6,370 (Feb. 18, 1986); Exec. Order No. 12,689, 54 Fed. Reg. 34131 (Aug. 18, 1989).

[368] 48 C.F.R. § 9.407-2(b).

[369] USAM § 9-28.1300 (2008).

[370] *See, e.g.*, African Development Bank Group, Integrity and Anti-Corruption Progress Report 2009-2010 7, 14 ("As the premier financial development institution in Africa, the AfDB is determined to root out misconduct, fraud and corruption within its own ranks as well as in the implementation of the projects it finances. In order to do so, the Bank created an anti-corruption and fraud investigation division in November 2005 as its sole investigative body. The unit became operational in June 2006 and commenced investigations in January 2007. . . . Investigations conducted by the IACD [Integrity and Anti-Corruption Department] are not criminal proceedings; they are administrative in nature. Sanctions range from personnel disciplinary actions, such as separation, to loan cancellation and debarment for contractors, which can be temporary or permanent."), *available at* http://www.afdb.org/fileadmin/uploads/afdb/Documents/Publications/Integrity%20and%20Anti-Corruption.pdf; The World Bank Group, *Procurement: Sanctions Committee* ("The World Bank's debarment process was first formulated in July, 1996, and the Sanctions Committee was established in November 1998 to review allegations and recommend sanctions to the President. Written procedures were issued in August 2001 and are posted on the Bank's website, along with the sanction actions."), *available at* http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/PROCUREMENT/0,,contentMDK:50002288~pagePK:84271~piPK:84287~theSitePK:84266,00.html.

[371] *See* African Development Bank Group, Asian Development Bank, European Bank for Reconstruction and Development, Inter-American Development Bank Group and World Bank Group, *Agreement for Mutual Enforcement of Debarment Decisions* (Apr. 9, 2010), *available at* http://siteresources.worldbank.org/NEWS/Resources/AgreementForMutualEnforcementofDebarmentDecisions.pdf.

[372] *Id.*; *see also* The World Bank Group, *Cross-Debarment Accord Steps Up Fight Against Corruption* (Apr. 9, 2010) ("'With today's cross-debarment agreement among development banks, a clear message on anticorruption is being delivered: Steal and cheat from one, get punished by all,' said World Bank Group President Robert B. Zoellick."), *available at* http://web.worldbank.org/WBSITE/EXTERNAL/NEWS/0,,contentMDK:22535805~pagePK:64257043~piPK:437376~theSitePK:4607,00.html.

[373] 22 C.F.R. §§ 126.7(a)(3)-(4), 120.27(a)(6).

[374] Authority under the AECA is delegated to the DDTC. *See* 22 C.F.R. § 120.1(a).

[375] 22 U.S.C. § 2778(g)(1)(A)(vi), (g)(3)(B).

[376] 22 C.F.R. § 127.7(c).

[377] *See supra* note 286.

[378] *See* Gary G. Grindler, Acting Dep. Att'y Gen., U.S. Dept. of Justice, Mem. to the Heads of Department Components and United States Attorneys on Additional Guidance on the Use of Monitors in Deferred Prosecution Agreements and Non-Prosecution (May 25, 2010), *available at* http://www.justice.gov/dag/dag-memo-guidance-monitors.pdf; Lanny A. Breuer, Assist. Att'y Gen., Dep't of Justice, Mem. to All Criminal Division Personnel on Selection of Monitors in Criminal Division Matters (June 24, 2009), *available at* http://www.justice.gov/criminal/fraud/fcpa/docs/response3-supp-appx-3.pdf; *see also* Craig S. Morford, Acting Dep. Att'y Gen., U.S. Dept. of Justice, Mem. to the Heads of Department Components and United States Attorneys on Selection and Use of Monitors in Deferred Prosecution Agreements and Non-Prosecution Agreements with Corporations (Mar. 7, 2008), *available at* http://www.justice.gov/dag/morford-useofmonitorsmemo-03072008.pdf.

[379] Historically, DOJ had, on occasion, agreed to DPAs with companies that were not filed with the court. That is no longer the practice of DOJ.

[380] USAM § 9-27.230.

[381] USAM § 9-27.230.B.

[382] DOJ has recently declined matters where some or all of the following

circumstances were present: (1) a corporation voluntarily and fully disclosed the potential misconduct; (2) corporate principles voluntarily engaged in interviews with DOJ and provided truthful and complete information about their conduct; (3) a parent company conducted extensive pre-acquisition due diligence of potentially liable subsidiaries and engaged in significant remediation efforts post-acquisition; (4) a company provided information about its extensive compliance policies, procedures, and internal controls; (5) a company agreed to a civil resolution with the Securities and Exchange Commission while also demonstrating that criminal declination was appropriate; (6) only a single employee was involved in the improper payments; and (7) the improper payments involved minimal funds compared to overall business revenues.

[383] *See* Criminal Information, *United States v. Peterson*, *supra* note 8, Press Release, U.S. Dept. of Justice, Former Morgan Stanley Managing Director Pleads Guilty for Role in Evading Internal Controls Required by FCPA (Apr. 25, 2012), *available at* http://www.justice.gov/opa/pr/2012/April/12-crm-534.html ("After considering all the available facts and circumstances, including that Morgan Stanley constructed and maintained a system of internal controls, which provided reasonable assurances that its employees were not bribing government officials, the Department of Justice declined to bring any enforcement action against Morgan Stanley related to Peterson's conduct. The company voluntarily disclosed this matter and has cooperated throughout the department's investigation."); *see also* Press Release, U.S. Sec. and Exchange Comm., SEC Charges Former Morgan Stanley Executive with FCPA Violations and Investment Adviser Fraud (Apr. 25, 2012), *available at* http://www.sec.gov/news/press/2012/2012-78.htm ("Morgan Stanley, which is not charged in the matter, cooperated with the SEC's inquiry and conducted a thorough internal investigation to determine the scope of the improper payments and other misconduct involved.").

[384] SEC Rules of Practice, 17 C.F.R. § 201.102(e).

[385] Deferred Pros. Agreement, In the Matter of Tenaris, S.A. (May 17, 2011), *available at* http://www.sec.gov/news/press/2011/2011-112-dpa.pdf; *see also* Press Release, U.S. Sec. and Exchange Comm., Tenaris to Pay $5.4 Million in SEC's First-Ever Deferred Prosecution Agreement (May 17, 2011), *available at* http://www.sec.gov/news/press/2011/2011-112.htm.

[386] *See* Non-Pros. Agreement, In re Tenaris, S.A. (May 17, 2011), *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/tenaris-sa/2011-03-14-tenaris.pdf.

[387] *See* U.S. SEC. AND EXCHANGE COMM., ENFORCEMENT MANUAL § 6.2.3. (March 9, 2012), *available at* http://www.sec-gov/divisions/enforce/enforcementmanual.pdf.

[388] *See id.* § 6.2.4.

[389] *See id.* § 2.6.

[390] 18 U.S.C. § 1514A(c).

[391] 18 U.S.C. § 1513(e).

[392] 15 U.S.C. § 78u-6(a)(3). The new provision defines "original information" to mean information that:

> (A) is derived from the independent knowledge or analysis of a whistleblower; (B) is not known to the Commission from any other source, unless the whistleblower is the original source of the information; and (C) is not exclusively derived from an allegation made in a judicial or administrative hearing, in a governmental report, hearing, audit, or investigation, or from the news media, unless the whistleblower is a source of the information.

[393] 15 U.S.C. § 78u-6; *see also* Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, § 922, 124 Stat. 1376, 1841-49 (2010).

[394] For detailed information about the program, including eligibility requirements and certain limitations that apply, see Section 922 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, *available at* http://www.sec.gov/about/offices/owb/dodd-frank-sec-922.pdf, and the final rules on eligibility, Exchange Act Rule 21F-8, 17 C.F.R. § 240.21F-8.

[395] For example, the rules: (1) make a whistleblower eligible for an award if the whistleblower reports original information internally, and the company informs the SEC about the violations; (2) give whistleblowers 120 days to report information to the SEC after first reporting internally and still be treated as if he or she had reported to the SEC at the earlier reporting date , thus preserving their "place in line" for a possible whistleblower award from the SEC; and (3) provide that a whistleblower's voluntary participation in an entity's internal compliance and reporting systems is a factor that can increase the amount of an award, and that a whistleblower's interference with internal compliance and reporting system is a factor that can decrease the amount of an award. *See* Exchange Act Rule 21F, 17 C.F.R. § 240.21F.

[396] *See* Exchange Act Rule 21F-7(b), 17 C.F.R. § 240.21F-7(b).

[397] For example, SEC staff will not disclose a whistleblower's identity in response to requests under the Freedom of Information Act. However, there are limits on SEC's ability to shield a whistleblower's identity, and in certain circumstances SEC must disclose it to outside entities. For example, in an administrative or court proceeding, SEC may be required to produce documents or other information that would reveal the whistleblower's identity. In addition, as part of ongoing SEC investigatory responsibilities, SEC staff may use information provided by a whistleblower during the course of the investigation. In appropriate circumstances, SEC may also provide information, subject to confidentiality requirements, to other governmental or regulatory entities. Exchange Act Rule 21F-7(a), 17 C.F.R. 240.21F-7(a).

[398] Although SEC does not have an opinion procedure release process, it has declared its decision to follow the guidance announced through DOJ's FCPA Opinion Release Procedure. U.S. Sec. and Exchange Comm., SEC Release No. 34-17099 (Aug. 29, 1980), *available at* http://www.sec.gov/news/digest/1980/dig082980.pdf. SEC Release No. 34-17099 stated that, to encourage issuers to take advantage of the DOJ's FCPA Review Procedure, as a matter of prosecutorial discretion, SEC would "not take enforcement action alleging violations of Section 30A in any case where an issuer has sought and obtained an FCPA Review letter from the Department, prior to May 31, 1981, stating that the Department will not take enforcement action under Section 30A with respect to the transaction involved." *Id.* The release further noted that it would revisit this policy once the DOJ had evaluated the results of the FCPA Review Procedure after its first year of operation. A second release stated that the SEC would continue to adhere to the policy announced in Release No. 34-17099. U.S. Sec. and Exchange Comm., SEC Release No. 34-18255 (Nov. 13, 1981), *available at* http://www.sec.gov/news/digest/1981/dig111381.pdf.

[399] Both DOJ's opinion procedure releases (from 1993 to present) and review procedure releases (from 1980-1992) are available at http://www.justice.gov/criminal/fraud/fcpa/opinion.

[400] The full regulations relating to DOJ's opinion procedure are available at http://www.justice.gov/criminal/fraud/fcpa/docs/frgncrpt.pdf.

[401] 28 C.F.R. § 80.1.

[402] 28 C.F.R. § 80.3.

[403] 28 C.F.R. § 80.12 ("Neither the submission of a request for an FCPA Opinion, its pendency, nor the issuance of an FCPA Opinion, shall in any way alter the responsibility of an issuer to comply with the accounting requirements of 15 U.S.C. 78m(b)(2) and (3).").

[404] 28 C.F.R. § 80.4.

[405] 28 C.F.R. § 80.5.

[406] 28 C.F.R. § 80.6.

[407] 28 C.F.R. § 80.14(a). This non-disclosure policy applies regardless of whether DOJ responds to the request or the party withdraws the request before receiving a response. *Id.*

[408] 28 C.F.R. § 80.6.

[409] 28 C.F.R. § 80.2.

[410] In connection with any request for an FCPA opinion, DOJ may conduct whatever independent investigation it believes appropriate. 28 C.F.R. § 80.7.

[411] 28 C.F.R. § 80.15. Once a request is withdrawn, it has no effect. However, DOJ reserves the right to retain a copy of any FCPA opinion request, documents, and information submitted during the opinion release procedure for any governmental purpose, subject to the restrictions on disclosures in 28 C.F.R. § 80.14.

[412] 28 C.F.R. § 80.8.

[413] 28 C.F.R. § 80.7. "Such additional information, if furnished orally, must be confirmed in writing promptly. The same person who signed the initial request must sign the written, supplemental information and must again certify it to be a true, correct and complete disclosure of the requested information." *Id.*

[414] 28 C.F.R. § 80.9 ("No oral clearance, release or other statement

purporting to limit the enforcement discretion of the Department of Justice may be given. The requesting issuer or domestic concern may rely only upon a written FCPA opinion letter signed by the Attorney General or his designee.").

[415] 28 C.F.R. § 80.8. FCPA opinions do not bind or obligate any agency other than DOJ. They also do not affect the requesting party's obligations to any other agency or under any statutory or regulatory provision other than those specifically cited in the particular FCPA opinion. 28 C.F.R. § 80.11. If the conduct for which an FCPA opinion is requested is subject to approval by any other agency, such FCPA opinion may not be taken to indicate DOJ's views on any legal or factual issues before that other agency. 28 C.F.R. § 80.13.

[416] 28 C.F.R. § 80.10. DOJ can rebut this presumption by a preponderance of the evidence. A court determining whether the presumption has been rebutted weighs all relevant factors, including whether the submitted information was accurate and complete and the activity was within the scope of conduct specified in the request. *Id.* As of September 2012, DOJ has never pursued an enforcement action against a party for conduct that formed the basis of an FCPA opinion stating that the prospective conduct would violate DOJ's present enforcement policy.

[417] As a general matter, DOJ normally anonymizes much of the information in its publicly released opinions and includes the general nature and circumstances of the proposed conduct. DOJ does not release the identity of any foreign sales agents or other types of identifying information. 28 C.F.R. § 80.14(b). However, DOJ may release the identity of the requesting party, the foreign country in which the proposed conduct is to take place, and any actions DOJ took in response to the FCPA opinion request. *Id.* If a party believes that an opinion contains proprietary information, it may request that DOJ remove or anonymize those portions of the opinion before it is publicly released. 28 C.F.R. § 80.14(c).

[418] 28 C.F.R. § 80.16.

FCPA Unit
Fraud Section, Criminal Division
U.S. Department of Justice
1400 New York Avenue, N.W.
Washington, DC 20005
http://www.justice.gov/criminal/fraud/fcpa/

FCPA Unit
Enforcement Division
U.S. Securities & Exchange Commission
100 F Street, NE
Washington, DC 20549
http://www.sec.gov/spotlight/fcpa.shtml

From: Alan Dershowitz [redacted]
Sent: 12/31/2014 11:43:48 PM
To: jeffrey E. [jeevacation@gmail.com]
CC: Martin G Weinberg [redacted]
Subject: Re: Filing in Epstein case

Importance: High

Privileged - Redacted

Sent from my iPhone

On Dec 31, 2014, at 4:01 PM, jeffrey E. <jeevacation@gmail.com> wrote:

Disgusting: Clinton Snared In Pedophile Ring

Will having friends in high places exempt him from the rule of law?

Kris Zane — March 27, 2014

According to former child sex slave Virginia Roberts and a class action lawsuit against convicted billionaire pedophile Jeffrey Epstein, former President Bill Clinton was present during sex parties involving up to twenty underage girls at Epstein's secluded island in the Caribbean. That flight records show Clinton was flown on numerous occasions to the island on Epstein's private jet. Clinton had a close relationship with an employee of Epstein's who compiled thousands of photos of nude young girls posed in lewd positions. And these photos were used as a catalog for Epstein to loan out his girls to powerful politicians and British royalty, including Bill Clinton.

According to the lawsuit:

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…Clinton was friends with an unnamed woman who "kept images of naked underage children on her computer, helped to recruit underage children for Epstein… and photographed underage females in sexually explicit poses."

While Epstein was indicted and jailed for his pedophilia, Bill Clinton oddly has remained unscathed, more than likely by having friends in high places.

If Bill Clinton is in fact a pedophile, will the American people demand that he be put away for a very long time so that he can't hurt any more children? Or will having friends in high places exempt him from the rule of law?

Time will tell.

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About the Author Kris Zane

109 Comments

1. JOHNTHEFOXWINS

   March 27, 2014 at 12:10 pm — Log in to Reply

   NO ONE SHOULD BE SURPRISED BY THIS. SO CASTRATE HIM AND GIVE HILLARY A LOBOTAMY!

   ○ dfinch

     March 27, 2014 at 3:34 pm — Log in to Reply

     I can see it now…..If Hillary does go into the Whitehouse I can invision him walking the halls in his underwear and skinny dipping in the Whitehouse pool. Eewwww…

     ▪ Andy

       March 28, 2014 at 7:40 am

       You do realize that Bill Clinton used to be the President, right? And that Hillary hasn't said that she's even going to run in '16 yet, right? Low information voter.

▪

tonistimmel

March 29, 2014 at 8:59 am

I'm sure you meant "in the White House Secretarial Pool"

▪

tonistimmel

March 29, 2014 at 9:05 am

Andy really hit the nail on the head when he signed himself off as "low information voter", most of them don't want to admit it.

2.

pdxracefan

March 27, 2014 at 12:26 pm — Log in to Reply

This is my shocked look. Here's hoping this, or something like it will keep that vile, hideous witch of a wife of his out of the campaign in 2016.

3.

Oldveteran

March 27, 2014 at 12:31 pm — Log in to Reply

Like some of the people stated when he was caught "playing" with Monica……he's just a man. Media blew it off, the Demons yelled about going after him just because he was a Demon. I don't think THIS will be "told" to the people, especially by the media. Don't want to make this man's wife look bad. Then, remember how "slick" asked for the meaning of "is" and "sex." Demons can be some of the most vile and ugly people on the planet……..

○

Hiram

March 27, 2014 at 4:53 pm — Log in to Reply

I'm going to stop calling them DemonRats and just call them Demons!

▪ Marjorie

December 13, 2014 at 11:19 am

That is what I have been calling the for years.

○ Magic1808

March 30, 2014 at 12:59 am — Log in to Reply

I don't think you have to worry about making Hillary look bad, she does that well on her own. After Benghazi, she lost all of my respect.

4. PDavis

March 27, 2014 at 12:33 pm — Log in to Reply

I am so sick of everyone acting like the Clinton's and even the Kennedy's are royalty. They are just a bunch of depraved people, bloated by their excess and wealth. If Clinton has been a part of this w/Epstein, then he should be in jail too where he belongs.

5. JoAnn523

March 27, 2014 at 12:37 pm — Log in to Reply

Why is anyone surprised ? They both have ALWAYS been disgusting and revolting along with greedy and corrupt !
For the most part almost every creature like this always ends up being a filthy so called Democrat. Look at all the others that are in prison or should be there now. If they were all in prison we may have a chance of a decent country once more !!!

6.
jayleigh
March 27, 2014 at 12:49 pm — Log in to Reply

And? What will happen? What WILL happen and what SHOULD happen are two different things. The lamestream media will never cover this story. Nothing will come of it. To the left, this is just a ho-hum blip. i'll be mega-surprised if Reuters even blinks and puts it on an inside back page. The AP won't touch it… so? i don't see it making an impact on the Hill's run – not when the media will treat it as a yawner. As a former CPS child advocate, i can't print here what i think ought to happen to him….

○
John
March 28, 2014 at 9:59 am — Log in to Reply

Are you self-quashing your freedom of expression or what ???? It's not about "SHOULD" But IF he's impicated, but when ! More than likely Never ! "IF" you were meerly "implicated" You are automatically publicly scorned ,forever. you will always be known to have been implicated in Child porn and also forever be known to be a Pedophile , right ? The Evidence will never surface , or will it ? Remember that Obamacare thingy ? It has been and always will be a lie , unless of course someone "GROWS A "F"ing PAIR" and comes up with Documentation to prove it ! Grow a pair yourself JAYLEIGH ……Speak up my fellow American citizen ! "Just do it " , I double dog dare ya !

○
daniel9867
March 30, 2014 at 3:22 pm — Log in to Reply

i wouldn't be putting that your a cps advocate do to the fact that they are the biggest child theft ring in the world i think every fcking one that works for cps should be put in prison for life.

7.
blackhawk
March 27, 2014 at 12:51 pm — Log in to Reply

Sure lets make Hillary President so Bill can expand his sex addition.They are one sick family.

8.
rocquedog
March 27, 2014 at 12:56 pm — Log in to Reply

I hope that I'm around when he has to face his maker! So many crimes, so many judgements!

○
John
March 28, 2014 at 10:09 am — Log in to Reply

Focus on one thing , and ONLY one (1) my fellow American Citizen ! ! Obamas Oath of Office ! "IF" The American citizens can't see this for what it is, We the People will epically loose the battle for OUR very own idividule FREEDOM, PERIOD ! "F"ing Freedom will be GONE ! Get the picture , YET ?

○
Beeta46
March 30, 2014 at 5:01 pm — Log in to Reply

And when she faces our creator… Google 'Clinton Body Count" and see the list of people that they are responsible for having killed… She has so many people that are stupid enough to do her bidding in murder. Do they now know that murder carries a sentence of HELL in the eyes of God.. That is right they do not believe in God… They think they are GOD!

9.
Nancy
March 27, 2014 at 1:05 pm — Log in to Reply

I CAN'T SAY I AM SURPRISED, HE HAS THE MORALS OF AN ALLEY CAT, AND SO DOES HILLARY. I WOULD HATE TO SEE HER AS PRESIDENT WITH ALL OF THE CRAP SHE HAS PULLED. I THIBN WE ALL KOW THA THE MARRIAGE IS OF CONVENIENCE, SHE IS INTO WOMEN, NOT BILL OR OTHER MEN.

○

Kathy

March 30, 2014 at 3:52 pm — Log in to Reply

Nancy, you are so right and it is time now to take back the Peoples White House and don’t let this trash back in. We have had enough with obama trashing our Great Nation AND THE WHITE HOUSE. I suspect very soon he will have us in a War. Neither Hillary the dike or obama respects our service men and they should both be put in jail for how they handled our men in that ugly country. God Bless America As We Knew It and In God We trust. NO MORE DEMORATS OR GAYS FOR PRESIDENT.

10.

Carl

March 27, 2014 at 1:06 pm — Log in to Reply

>>> THIS MUST BE ” STRIKE # 9 ” OF SLICK WILLIE <<< ANYONE WHO WOULD LISTEN TO HIS B . S . NOW MUST BE JUST AS DEPRAVED AS HE IS . BTW ———BY THE WAY ~ BOTH ' SLICK WILLIE ' AND HIS BITCH " HITLERY " CLINTON WERE CARD CARRYING COMMUNISTS WHILE IN COLLEGE TOGETHER .

11.

DockyWocky

March 27, 2014 at 1:08 pm — Log in to Reply

Years ago, I watched as the Dirty Old Men of the Panamanian government picked up their little blonde playthings from their crib in Panama City.

I have a feeling that if anyone really investigates the crop of liberal Hypocrats in power today, they would find who were the real Dirty Old Men of the party.

Bubba Clinton is only the first to be exposed.

12.

Carol

March 27, 2014 at 1:10 pm — Log in to Reply

Is anyone surprised? They shouldn’t be! Ejo wants any of these evil spirits back on the White House?

13.

Carol

March 27, 2014 at 1:11 pm — Log in to Reply

Is any one surprised? Who wants any of these evil spirits back in the White House?

○

John

March 28, 2014 at 10:19 am — Log in to Reply

Well, LOFL , He alone Literally “Stained the Oval Office with his very own DNA” ! Obama is shurely DEFACATING ON IT as we speak, AS WELL AS THE CONSTITUTION .And then……….We the People are idley standing by and watching him destroy America AND the Constitution ! The simplicity of it is, That obama is a unconstitutional scholar / LIAR, period !

14.

Spudmans2

March 27, 2014 at 1:17 pm — Log in to Reply

They do not call him “slick” willy for nothing. Short of an actual photograph or video of him engaging in sex with a child there is no way he will get this pinned on him. Just remember how many people (40-50) connected to him and “her” that have lost their lives (murdered) and he’s never been prosecuted.
As much as I would like to see him and his carpet munching wife brought down it is just not going to happen, at least this way it’s not…

15.

Randolph

March 27, 2014 at 1:22 pm — Log in to Reply

So boy a la mode is his choice of dessert?

16.

99airforce

March 27, 2014 at 1:36 pm — Log in to Reply

I am not surprised, if hey dig deeper I think they will find Hillery was there too.
They were vile people, she was responible for the death of 4 Real Americas, but what ddifference does it make, its bad enough we have become a joke in the world, our anotited one has crippled our military, but they are letting anyone come in to our country, with no fear of deportation! Obama needs to be deported, but Kenya does not want his sorry ass back.

17.

mwood

March 27, 2014 at 1:36 pm — Log in to Reply

the clintons have lied their way out of almost every crime on the books

18.

knightflyerii

March 27, 2014 at 1:39 pm — Log in to Reply

I'm no Bill Caligula fan, but the column fails to mention the ages of these "children" he supposedly fooled around with. Are they more 16 & 17 year old girls who can pass for 24 as females are so good at? Did Bill Caligula know the ages of these supposed children before he started fooling with them?

19.

MMillAR

March 27, 2014 at 1:45 pm — Log in to Reply

"will the American people demand that he be put away for a very long time"
Yeah… lets put that one right over there with the mythical Obama impeachment.What is more likely is that NAMBLA now has a new champion and this might become part of the kickstart to force Americans to tolerate yet another class of pervert. You don't have to be "religious" to know a pervert when you see one.
You laugh but, "gay rights" is just the start of this downward spiral.

20.

Nikita63

March 27, 2014 at 1:45 pm — Log in to Reply

This self proved scumbag was impeached as President but got off and he will this time too. The left has so utterly turned us into a valueless and degenerate society and is determined to destroy what little of decency is left that he will NEVER be held either responsible or accountable for his sins. We have a criminally complicit Congress which has allowed the rule of law to cease to matter and when the time comes when they NEED it for their OWN SELF PRESERVATION, it will not be available even to them. As they have sown, so shall they reap! Between them, The Clintons are the perfect example of what is wrong with the Country at large and one of the major reasons we are now stuck with one worse and a set of political parasites who enable HIM to barter our freedoms, sovereignty and resources to our enemies. We have a word for those. You all know what it is but few in this country call them what they are, not only violators of their sworn oaths of Office but: TRAITORS. This one also happens to be apparently, according to this reference, a pedophile. will wonders never Cease or for that matter, CEASE TO DISGUST?

○

msueh

March 30, 2014 at 3:23 pm — Log in to Reply

"[…] he will NEVER be held either responsible or accountable for his sins."
Perhaps in this life, but not when he has to grovel before his Maker.

○

Jim

April 22, 2014 at 7:59 pm — Log in to Reply

Der Schleek Meister

21.

savannarose55

March 27, 2014 at 2:00 pm — Log in to Reply

do we really want this disgusting drama in the whitehouse again. i heard both the clintons lost their lawyers license, then bill gets impeached but he's like an enigma and you cant rid of him, then hillary as sec of state allows our embassy or annex (the stories never the same) to be attacked and we lose four americans and lies to the public thinking we're all idiots and we would just go along with the ridiculous story that this happened because of a muslim allah bashing tape, and why do we think she would be good for us as president…. people that dont agree with these two wind up dead, theyre toxic………. lets say we at least learned something from the clinton dynasty………

○

John H. Montgomery Jr. USMC (retired)

March 31, 2014 at 10:39 am — Log in to Reply

There's more scum supporting him than righteous people against him. they know there's awaits them. they don't care. people don't care. They rather see Satan in the white house than a conservative.

22.

mystic11

March 27, 2014 at 2:09 pm — Log in to Reply

NO SURPRISE!!!. HIS OVAL OFFICE ESCAPADES WITH THE MUCH YOUNGER GIRL WAS PROOF THAT HE LIKED "YOUNGER CHILDREN". HE HAS ALWAYS BEEN AN "OLD SLOBBER DRIPPING SEX MANIAC, PEDOPHILE. HIS WIFE LOOKS LIKE A COLD HARD, MIND WARPED, MURDERER (BENGHAZI) LESBIAN WHO JUST "STOOD BY HER MAN" TO HIDE HER SEXUAL PREFERENCE WHILE CONNING AMERICANS AS IF THEY WERE SAINTS. ONLY THE DEMOCRATS AKA DONKEYS/ ASSES (DEMS LOGO) FELL FOR THAT CON/CRAP BECAUSE THEY ARE THE MOST STUPID ANIMALS AKA PEOPLE ALIVE!!!!!!!!!!!!!!

THESE COMMIES AKA PROGRESSIVES ARE THE MOST DESPICABLE, LYING ANIMALS (OTHER THAN THEIR PAL, THE COMMIE,NAZI, HITLER#2 MUSLIM TERRORIST THE WHITE HOUSE) ALIVE.
THEY BOTH SHOULD BE IN PRISON (HER FOR MURDER (BENGHAZI, ETC.) AND HIM FOR SEXUAL PERVERSION, PEDOPHELIA!!!(?) GOOD CRIMINAL DEMOCRATS.

CAN ANYONE IMAGINE THE SECOND HALF OF THIS CRIMINAL DUO BEING "PRESIDENT OF AMERICA" AND CONTINUNING HER (THEIR) CRIME SPREES AGAINST AMERICA AND HUMANITY, POLITICALLY AND PERSONALLY THAT THEY HAVE ENJOYED FOR MANY YEARS????

A FEW "GOOD DEMS" ARRESTED THIS WEEK, CALIFORNIA NORTH CAROLINA, 4 OR 5 BLACKS IN MASS.(?) THAT SHOULD HAVE BEEN ARRESTED FOR THEIR CRIMES OF BRIBERY, ETC. BUT THE CROOKED ATTORNEY(?) THINKS IT WOULD BE "RACIST" AND SAID "NO". (DEMS SURE LIVE UP TO THE LOGO, DONKEYS/ASSES!!!!) IF THE BLACKS HAD BEEN WHITE AND GOP, CONSERVATIVE, INDEPENDENT, ETC. THEY WOULD HAVE BEEN ARRESTED IMMEDIATELY AND GO TO PRISON FOR MANY YEARS!!!! THOSE CRIMINAL DEMS AT WORK AS USUAL, AGAIN!!!!

GOD BLESS AMERICA.

23.

Linda

March 27, 2014 at 2:11 pm — Log in to Reply

This is true, but is not limited to Bill Clinton or the Democrats. It permeates the top levels of most, if not all govts, as well as the Vatican, and includes all parties. Watch the following documentary prepared by the BBC for The Discovery Channel. It was pulled at the last moment due to pressure from high levels of the US govt. Listen for the Republican names. Then share it everywhere! http://youtu.be/vBSIDQt5Dwc

Watch this one for the international factor.
http://youtu.be/XhnG76vwNms

24.
Ron

March 27, 2014 at 2:15 pm — Log in to Reply

Bill Clinton is a pervert and Hilary allows him to prey on women and Children. Let us get rid of all the Democrats who have all become communists and liars.

25.
junctionshamus

March 27, 2014 at 2:17 pm — Log in to Reply

Sure it was Bill, and not Hill?

Someone wanna double check that, just to be sure. With young girls, chances are 50-50…

26.
Carla

March 27, 2014 at 2:21 pm — Log in to Reply

about that 'War on Women'…..

27.
slammer

March 27, 2014 at 2:28 pm — Log in to Reply

is this real or onion?

28.

mystic11

March 27, 2014 at 2:42 pm — Log in to Reply

OOPS!!! SORRY, I ACCIDENTLY OMITTED THE COMMA BETWEEN CALIFORNIA AND NORTH CAROLINA IN THE FIRST SENTENCE OF THE LAST PARAGRAPH IN MY COMMENT!!!

29.

HappyClinger

March 27, 2014 at 3:17 pm — Log in to Reply

People who are paid to keep their mouths shut about illegal activities are not obligated to keep their mouths shut. The agreement does not have the force of law.

TALK, GIRLS!

30.

malcolmX

March 27, 2014 at 3:19 pm — Log in to Reply

cut off the old bast66rds BALLS AND TONGUE;; filthy scumbag……libocrats [44 raids today] are low live hypocrites with the morality of a cockroach;; nuke the fu##kers.

31.

Gary

March 27, 2014 at 3:49 pm — Log in to Reply

Exempt. Just like Obama, he won’t even appear in network news stories.. The left’s agenda is more important than abused children.

32.

Mel

March 27, 2014 at 4:19 pm — Log in to Reply

So this is why Commiecrats have been knocking on the door of legalized pedophilia.
I was wondering what was up.
Stay on this WJ.

33.
michael

March 27, 2014 at 4:47 pm — Log in to Reply

Now we know what Prs Obama had on them

34.
michael

March 27, 2014 at 4:50 pm — Log in to Reply

And with the help of Eric Holder and his DOJ (because its not ours) he can and did keep him out of jail

35.
Bob Bitchin'

March 27, 2014 at 5:10 pm — Log in to Reply

Oh Oh! Sounds like Billy Jeff may have really stepped in it this time. I doubt he will ever be prosecuted nor will the mainline liberal biased news media ever carry any such story no matter what the proof.

Gee, maybe after OButtbreath leaves office, evidence will come out of his visit to HOMOsexual bath houses, HOMOsexual rendezvous and relationships and dare I say? Evidence of pedophilia with underage boys. OButtbreath has made many enemies as has his wife and the Clintons both. A bit coincidental that the last two DEMONcratic Presidents in this country should be embroiled in such controversy.

36.
Magic1808

March 27, 2014 at 5:10 pm — Log in to Reply

The laundry list of all the crimes committed by slick Willy are available at the following site. It’s amazing the man is still so active in Washington, and the government. He often represents America in many activities. I am not surprised to learn of his involvement in Pedophilia, and is probably behind this push to legalize it. When are

American's going to stand up against this? This is way beyond corruption, and needs to be stopped dead in its tracks. When will Americans stand up and make a stand against such evil?
http://prorev.com/legacy.htm

37.

rocquedog

March 27, 2014 at 5:25 pm — Log in to Reply

Magic, I say we start May 16th in DC at the OAS event. We get rid of the current evil in the Wh. then continue "cleaning house".

38.

Chase

March 27, 2014 at 5:49 pm — Log in to Reply

Ps, moderators, next week I start hacking in and posting without your intervention. So look forward to it…. :)

39.

Bds

March 27, 2014 at 5:56 pm — Log in to Reply

The question asked is: "Will having friends in high places exempt him from the rule of law?"

The answer is YES because those in "High Places" are still trying to decipher the real meaning of the word "is"

BDS.

40.

MuslimLuvChrist

March 27, 2014 at 6:52 pm — Log in to Reply

I forgot how corrupt and disgusting the Clintons really are.

○

mlimberg

March 30, 2014 at 12:28 pm — Log in to Reply

Can anyone say “Sheep Ranch”?

41.

sunshkid

March 27, 2014 at 6:55 pm — Log in to Reply

I’m definitely not surprised. Consider that Monica Lewinski was 22 at the time she first had sex with him (and he was more than double her age at the time, considering he was 49 years old), I can see where his bent for the young was already manifesting itself.

42.

Magic1808

March 27, 2014 at 6:58 pm — Log in to Reply

Rocquedog…I plan on being there, let’s get these corrupt bastids out of OUR Whitehouse!

43.

tonistimmel

March 27, 2014 at 6:59 pm — Log in to Reply

Remember back to the good ole days when the Secret Servants used to be a law enforcement agency known as the Secret Service. Of course back then even the democrats has some sense of honor and/or discretion.

44.

Magic1808

March 27, 2014 at 7:27 pm — Log in to Reply

Muslimluvchrist…Remember…now don’t forget! Let’s not forget one of the highlights of his presidency, signing NAFTA, which resulted in America losing countless businesses that provided jobs for Americans, which we still suffer from.

45.

MrBrittcoleman

March 27, 2014 at 7:36 pm — Log in to Reply

If this is true then it is truly disgusting. That being said, after reading the comments section most of you need to get off of your republican high horse. Many republican politricksters have also been embroiled in sex scandals, some of them with minors, and some with underage boys. Now before the vains start popping out of your neck causing you to respond to me in all caps calling some sort of commie democrat leftist, realize that I hate the democrats just as much as I hate the republicans. In fact let's just call them the demublicans or the republicrats, whatever your pleasure. Most of you need to realize it's not about the ideology of one party or the other, it's about the ideology of power. These politricksters, all of them more stinking rich than average Joe American, get in the insulated world of political power and get a sense of invincibility and entitlement. They don't care about you or me, not a single one of them. But, as long as we keep seeing each other as the enemy rather than realize that they are the real enemy bent on destroying this country and the world then we, our children, and our grandchildren are doomed.

Below is a link to federal sex scandals perpetrated by republicrats and demublicans alike. Keep in mind that this list does not include local and state level scandals.

http://en.wikipedia.org/wiki/List_of_federal_political_sex_scandals_in_the_United_States

46.

Magic1808

March 27, 2014 at 8:16 pm — Log in to Reply

Sunshkid, I thought the same thing…he took advantage of a young Wh intern who probably looked up to him like a God almost. He perhaps fed her lies and lured her to his den. It's not hard to imagine the senario…

47.

rocquedog

March 27, 2014 at 8:21 pm — Log in to Reply

Clinton is a low life scum sucking child molester! He's a disgrace to the human race. His wife is no better, as she allowed 4 of our patriots to be murdered without sending help when they pleaded for it.

48.

Magic1808

March 27, 2014 at 8:26 pm — Log in to Reply

Tonistimmel, yes, the Secret Service guards the president. Today I question the sense of honor and/or discretion of all politicians and government officials. This is no longer the America we were brought up in. And, I am not sure any of them have those qualities, or good intentions they once had.

49.

99airforce

March 27, 2014 at 8:33 pm — Log in to Reply

Do you remember the white water land scandal, the only ones not dead, or in jail were the Clinton's, when is the slobbering love affair with the Clinton's going to end, 4 great Americans died because of this witch!

50.

Magic1808

March 27, 2014 at 8:43 pm — Log in to Reply

Rocquedog, the latest info is that Chelsea is not slicks daughter, but is the daughter of Webb Hubbell: http://www.mofopolitics.com/2013/08/23/the-clintons-greatest-shame-chelsea-clinton-is-the-biological-daughter-of-webb-hubbell/. As for Benghazi, I watched the whole thing go down, as I was online when the first call for help came in. At the time, they claimed that the attack was because of an anti Islamic video. All the while, unbeknown to us, we were giving the Syrian Rebels arms, which had already been infiltrated by Al Nursa/Al Qaeda. In order to keep it all under wraps, Benghazi took care of all credible witnesses. IMHO.

51.

bobmann101

March 27, 2014 at 8:51 pm — Log in to Reply

We shall see what will happen. I believe he was involved, but I need to see the proof.

52.

Magic1808

March 27, 2014 at 9:07 pm — Log in to Reply

Rocquedog, I agree he is a low life, and Hillary is just as bad. Her relationship with Huma Abedine and Anthony Weiner leaves room for many questions. Weiner is runner up to slick Willy on preying on young women, and Hillarys relationship with Huma is suspicious to say the least. Birds of a feather? Or should I say perverts of feather?

53.

Magic1808

March 27, 2014 at 9:17 pm — Log in to Reply

99AIRFORCE, yes I do remember the white water land scandal, and you are correct about the outcome. If anyone has any questions concerning this, the following site gives the information. They were criminals, and I still do not understand how slick Willy was not considered so at the time of his nomination.

http://prorev.com/legacy.htm

54.

Doug James

March 27, 2014 at 10:03 pm — Log in to Reply

Bill Clinton has had a sexual problem for his entire life. People like the Clintons, Obamas, Bidens, Reids, Schumers, Boehners, Bushs, etc. can willingly, knowingly, & intentionally commit crimes with no recourse. The U.S. Supreme Court rules Obamacare is a tax, Most likely will make Hobby Lobby & similar companies do what they are morally against, Will likely ultimately rule to enact strict gun control laws if not an outright ban, Allow open boarders, & Immigrants. They always rule in the gov'ts favor. Rarely for the citizenship any longer. If the Constitution is ever amended and/or rewrote which they are in favor of they need to be given term & power limits. They are the Supreme Power of this Nation and have proven to be a bunch of decrepit buffoons.

55.

Magic1808

March 27, 2014 at 10:39 pm — Log in to Reply

BOBMAN101, I sure hope so, this subject is outrageous, and I don't know where the minds of these people are. A pedophile ring is beyond my scope of understanding, and about one of the worst things that could ever be considered acceptable. It is an extremely important issue, and I sure don't want it to escape full coverage by the media.

56.

Mario

March 27, 2014 at 10:47 pm — Log in to Reply

Why are Democrats involved in moral issues? These people should be put away until kingdom come especially Bill Clinton if he is ever involved. They are dangerous to be around. Castrate these pedophiles ASAP. They are so low life that if fed to the sharks, the sharks will spit them out due to their obnoxious odor.

57.

BILL

March 27, 2014 at 11:22 pm — Log in to Reply

SOUNDS LIKE SLICK WILLIE HAS BEEN GETTING OFF FOR SOME TIME NOW (IF YOU KNOW WHAT I MEAN)

58.

Taking care of business!

March 28, 2014 at 1:10 am — Log in to Reply

Bill should be castrated, then Hillary would be the only one with a member.

59.

lady_liberty_1776

March 28, 2014 at 5:06 am — Log in to Reply

No more Clintons or Bushes, ever again! The White House is going to have to be fumigated as it is. After the string of disgusting excuses for human beings we've had for Presidents, maybe we should just raze it and rebuild. Slick Willy and Killary should both be in prison. Instead they're adored by their disgusting supporters. Anyone that would support or even associate with these scum must be of the same caliber.

○

Taking care of business!

March 28, 2014 at 5:09 am — Log in to Reply

Don't stop there. No more Obama's either. And it seems there's always a Kennedy in the wings, willing to muddy the water.

○

tonistimmel

March 29, 2014 at 9:40 am — Log in to Reply

The hate "W" machine is still running in spite of the fact that "W" was a better president than Clinton and Obozo and their combinatuion. I realize that being better than those two is no real accomplishment, but "W" at least made the list of good presidents, may be not excellent, and definitely not great, a whole lot more than acceptible.

60.

Bob Bitchin'

March 28, 2014 at 6:46 am — Log in to Reply

Call it paranoid, call it conspiracy theory, call it what you watch. I wouldn't be one bit surprised to find out that there is/are a puppet master/group of puppet masters in the shadows pushing these douche bag politicians at us and giving us the illusion that there is a difference in their politics and philosophies when in reality they are all the same just doing their master's biding. They will push this liberal agenda just far enough to the edge of the cliff then pull back and give us back the conservative government so we can take retributions on the liberals for their treasonous behavior. Heads will roll, asses will get kicked, gays & blacks will once again be of no consequence and the illegals will be run out of the country. Once things have calmed down, they will change the politics again and the beat goes on.

61.

willyrho

March 28, 2014 at 7:06 am — Log in to Reply

We knew this when Monica Lewinski "with the Blue Dress with the Semen on it" exposed Billy Clinton, in the White Hoer House in DC, he had a B.J. with Monica Under the Desk in the Oval Office when he was impeached, but the Nat See Senate would not convict the Pedophile mur-derer of Vince Foster.

But we see with the new charges coming against the Felon, Hairy Reid, who takes Bribes and Steals as the DemoNatSee Leader of the Nat See Controlled Senate.

All DemoFascistCrats are Lawless and EVIL.

To think that Ronald Reagan would not remove his Suite Jacket in the Oval Office because he had such respect and Admiration of the Oval Office. And the DemoNatSees/Fascists/Marxist/Muslims now in the White House Suck…

62.

rocquedog

March 28, 2014 at 7:22 am — Log in to Reply

Willy, don’t forget Ron Brown. And now we have Obama’s “Ron Brown” with the Fuddy incident. Liars, cheaters, sex perverts, murderers, etc. The Demoncrats have truly been put in charge of Satan’s poliitical wing.

63.

John H. Montgomery Jr. USMC (retired)

March 28, 2014 at 9:05 am — Log in to Reply

Hillary likes the P word. perversion runs in the family. Obama is on the down low.

64.

John

March 28, 2014 at 10:35 am — Log in to Reply

NIXON lied once and was no longer trusted to lead the free world . Obama leads the free world and is STILL in office , but it won’t be long till it is in the hisory book and noted as ” The way we were ” and how stupid & gullible we were to sit on our hands , and do “too Little to damned late” Or for no better words…………….NOTHING !
ONE very BIG question my fellow American Citizens…………………..
Didn’t Obama , just like every other president in history after Lincolns death , Swear on the Lincoln Bible to “Support and Defend the Constitution ” ? Don’t strain your freakin’ Neurons folks, the answer is YES !

65.

John H. Montgomery Jr. USMC (retired)

March 28, 2014 at 10:35 am — Log in to Reply

hopefully people will see, putting in the white will also put a pervert back in the white house. Hillary has the P word coming through the back door for her.

66.

John H. Montgomery Jr. USMC (retired)

March 28, 2014 at 10:59 am — Log in to Reply

need to our representitives, if they can’t mov e toward impeachment, than they won’t have job.

67.

David

March 28, 2014 at 2:20 pm — Log in to Reply

This kind of evil is what kept Romney out of office, for the time being. Obama did not win the vote, he was placed in by the same people who protect Clinton in his evil sin. Of course he should be in prison, but he won’t see a day in prison as long as righteous people don’t stand up to evil.

○

John H. Montgomery Jr. USMC (retired)

March 29, 2014 at 11:27 am — Log in to Reply

Thy made up things on Romney. he things stiring us in the face and do anything about it.

68.

John

March 28, 2014 at 3:08 pm — Log in to Reply

WHAT DIFFERENCE DOES IT MAKE!
WHAT DIFFERENCE DOES IT MAKE!
WHAT DIFFERENCE DOES IT MAKE!

69.

William

March 28, 2014 at 3:55 pm — Log in to Reply

Does this really surprise anyone?

70.

Valchrist1313

March 29, 2014 at 12:47 am — Log in to Reply

The girls listed here (well not here, in an article longer than a twitter post) are of age in every European country, and Canada. Just like age of drinking, you guys are the anomaly with a higher degree of repression in all social areas.

The reason for that is the crazy -ass, hate spewing, xenophobic, ignorant political bandwagons and scape-goating your society is rife with. Right now you're trying to figure out how you can blame this on Obama aren't you? Yeah I know. Obama. His fault. Somehow. (Actually several posts already are)

That said, yeah he's stupid. He should follow the laws of his own country. If that's your laws he should be following them.

However, nobody here has the slightest friggen idea if any of this is the least bit true, but you're already forming the lynch mobs.

It's not because you're really upset about the issue at hand. It's hatred of your fat and miserable existence, your subscription and indoctrination in to disgusting and brutal pseudo-religious political beliefs, and your lazy inability to fact check a thing for yourself when you find it so much easier to ride on a bandwagon.

Search "consistency theory", if you can handle all the big words and ideas, and you'll figure out why you are unable to learn and grow as people.

I swear most of you can't create or express an idea without it being ascribed to a political view.

○

Oldveteran

March 29, 2014 at 4:55 pm — Log in to Reply

Huh? Wha? I'm figuring you're not an American citizen. You "bunched" up all into a group that you describe with some wonderful words. Maybe YOU know the WHOLE TRUTH, there are plenty who recall how a newly elected President had to give MONEY to a couple of women who had been "assaulted" by this scum bag. Check the news papers…….no not twitter…….Maybe you don't know about the "White Water" scandal or about Vince Foster, who "shot" himself in the RIGHT side of his head; the man must have been so depressed he used his "off" hand to pull the trigger. Maybe his left hand just shook too much. The "Monica" escapade was just a man having a fling with a silly woman, makes no mind the woman was the same age as his daughter. HE LIED UNDER OATH TO A FEDERAL JUDGE. He stood in front of the entire country and stated "he did not have sex with that woman." As for political view points…….isn't that how governments are elected? I don't know what country you live in, but here we like to THINK before voting, OOPS! I mean generally; right now there are too damn many NON thinking casting ballots. That's how we got slick and now Obummer.

- Valchrist1313

  March 29, 2014 at 8:18 pm

  Well, your post just proved my point about not being able to base an idea independent from a political view.

  About categorizing a populace: anyone intelligent enough to think for themselves isn’t going to need me to validate their self-worth, and realises within themselves that this label doesn’t apply to them.

71. DockyWocky

    March 29, 2014 at 8:43 am — Log in to Reply

    Good thing it was on here for a moment or two, because once the powers that be get their paws on this, Bubba, The Pervert info, they will bend over backward to make it disappear from view.

    By the time 2016 rolls around, Hillary and the co-president (Bubba) will be scrubbed squeaky clean and she’ll be so sanitized, the Pope will bow to her when she deigns to meet him.

72. DockyWocky

    March 29, 2014 at 8:50 am — Log in to Reply

    I find the funniest thing is the word “Choice” has been taken over by the pro-abortion mob, and the stupid people of the former united States don’t have any choice, anymore, period.

    If we had a smidgen of Choice anymore, the Clintons would be whining about getting paroled from their original prison sentences for wasting Vince Foster – on, get this, humanitarian grounds.

    We have no choice. All you have to do is open your eyes and you’ll see that we’re still nothing but the serfs who pay for the daily antics of the lords. Nothing has changed.

73. Cal

    March 29, 2014 at 1:27 pm — Log in to Reply

    ANYBODY who actually believes this obviously fake story is DEEPLY gullible.

○

John Prewett

October 29, 2014 at 11:00 pm — Log in to Reply

Right, obviously he was going to Epstiens “fantasy island” just to walk the beach looking for seashells.

74.

Mario

March 29, 2014 at 10:44 pm — Log in to Reply

What do you expect from a low life immoral person. Nothing up in the head as nothing inside his two balls.Worst is that he is a DemocRAT.

75.

ConservativeMe

March 30, 2014 at 12:20 pm — Log in to Reply

HEY KILLARY, ” WHAT DIFFERENCE DOES IT MAKE?”, RIGHT?

76.

james

March 30, 2014 at 1:37 pm — Log in to Reply

It comes as no surprise at all. It seems That ItIs a presequite to have a criminal record to run fo. Look at Gingrich and Romney stealing from Fannie Ma, oscammetr the criminal .They are all thieves,It does not matter what political party they belong to, A thief Is a thief Is a thief

77.

xron2

March 30, 2014 at 2:45 pm — Log in to Reply

Bill likes sex with children and Hillary likes sex with Muslim Women and helping to kill American Service men probably to please her Muslim Girl Fiend! Hang both of them beside Obama!

78.
BOBSAYSO

March 30, 2014 at 3:33 pm — Log in to Reply

I'm not surprised that a proven serial-rapist, murderer and drug trafficker would also be a pedophile. The leader of the administration before his, yes that guy, was also linked to a pedophile prostitution ring uncovered in the Franklin pedophile investigation. Research it; and also the name Johnny Gosh. It's a fascinating true story.

79.
msueh

March 30, 2014 at 3:34 pm — Log in to Reply

When are both of them going to end up on their list of "disappearances"?

80.
Doug

March 31, 2014 at 6:45 am — Log in to Reply

The clintons are just evil vial people and I am not surprised about this at all. Also there was a comment asking about the ages of those girls involved? "Clinton was friends with an unnamed woman who "kept images of naked underage children on her computer, helped to recruit underage children for Epstein… and photographed underage females in sexually explicit poses."
Read more at http://www.westernjournalism.com/clinton-snared-pedophile-ring/#PkFfIXxkTOIMkgS1.99

Pretty much covers that they were in fact underage children. Makes me sick to my stomach and would love to see "old icky billy" get his just reward but doubt it as the article also states, "because of friends in High Places".

81.
Ian

March 31, 2014 at 8:11 am — Log in to Reply

This hasn't surfaced because it's a bunch of B.S.

○
[John Prewett](#)

October 29, 2014 at 10:58 pm — [Log in to Reply](#)

yea, Slick Willie is soooooo straight-laced puritanical.

82.
[Miss](#)

April 7, 2014 at 9:03 pm — [Log in to Reply](#)

This is an old story. When Mr. Clinton was in the WH, there were stories going around that he was at one of his numerous cocaine parties and got an under-aged girl hooked on dope.

83.
[Rhonda](#)

July 14, 2014 at 9:48 am — [Log in to Reply](#)

What is the FBI doing? I guess they are owned by the Clintons…..and what of the Bush family too?

84.
[John Prewett](#)

October 29, 2014 at 10:56 pm — [Log in to Reply](#)

His friends in high places are most likely more vile than he is. See Matt 4

85.
[mwood](#)

October 30, 2014 at 8:15 am — [Log in to Reply](#)

check out all the death and destruction in the clintons past and then think about the possibility they might pay for any of it

Leave a reply

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23,563
followers
1,941,714
fans
5,935
people

Read more at http://www.westernjournalism.com/clinton-snared-pedophile-ring/#eVqlufHP4TEz8fmK.99

On Wed, Dec 31, 2014 at 3:55 PM, Alan Dershowitz <[redacted]> wrote:

> Privileged - Redacted
>
> Sent from my iPhone
>
> On Dec 31, 2014, at 2:38 PM, jeffrey E. <jeevacation@gmail.com> wrote:
>
> Privileged - Redacted
>
> On Wed, Dec 31, 2014 at 2:48 PM, Alan Dershowitz <[redacted]> wrote:
>
>> Privileged - Redacted
>>
>> Sent from my iPhone
>>
>> On Dec 31, 2014, at 1:38 PM, jeffrey E. <jeevacation@gmail.com> wrote:
>>
>> Privileged - Redacted
>>
>> On Wed, Dec 31, 2014 at 2:26 PM, Alan Dershowitz <[redacted]> wrote:
>>
>>> Privileged - Redacted
>>>
>>> Sent from my iPhone
>>>
>>> Begin forwarded message:
>>>
>>> **From:** Josh Gerstein <[redacted]>
>>> **Date:** December 31, 2014 at 1:03:19 PM EST

To: "[redacted]" <[redacted]>
Subject: Filing in Epstein case

Hi Prof. Dershowitz:

I've been following the Jeffrey Epstein litigation saga on and off for some time.

When I checked the federal court docket last night, I came across the attached filing. It makes some serious allegations about you and several other people related to the case.

I wanted to make sure you had a copy of the filing and to ask if you have any comments on the allegations raised in it.

I'm planning to write a blog entry or story on this and will probably do so fairly soon since the filing is a public record at this point.

Anyway, if you want to respond, please let me know as soon as possible.

Thanks

--Josh Gerstein

Josh Gerstein
Reporter
POLITICO
[redacted](c)

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From: Thomas Jr., Landon [redacted]]
Sent: 1/9/2015 6:17:14 PM
To: jeffrey E. [jeevacation@gmail.com]
Subject: Re: off the record

Importance: High

Lets have a chat -- you do need to fight back some how. Present evidence that she is lying AND show the world that you are no longer that guy. You have made changes -- and that this is the past. My sense is that its TV type thing where you just talk honestly about this/present evidence that its not true/ and focus on what you have been doing for past five years. Charlie Rose?

But you cant just sit there taking punches like this -- especially wen the British tabs are driving this.

Maybe you go on British TV....

Call me any time.

On Fri, Jan 9, 2015 at 1:08 PM, jeffrey E. <jeevacation@gmail.com> wrote:

> Landon. [redacted] the story teller , crafted much of it out of whole cloth. . part of her story , is that she was at multiple orgies with clinton and speciifically, the minute details of a dinner had on the island with him, " he sat on my left. came by black. heli. flown by ghislaine. clinton was NEVER EVER there, never. it punches a hole in the dershowitz , andrew allegation. making it all apparent that it was fantasy. and delusional. thoughts. who should break the story.
>
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--
Landon Thomas, Jr.
Financial Reporter
New York Times
[redacted]

http://topics.nytimes.com/top/reference/timestopics/people/t/landon_jr_thomas/index.html

From: Thomas Jr., Landon [[redacted]]
Sent: 1/9/2015 6:24:30 PM
To: jeffrey E. [jeevacation@gmail.com]
Subject: Re: off the record

Importance: High

on phone now -- will call when i am done

On Fri, Jan 9, 2015 at 1:20 PM, jeffrey E. <jeevacation@gmail.com> wrote:

> number?
>
> On Fri, Jan 9, 2015 at 2:17 PM, Thomas Jr., Landon <[redacted]> wrote:
>
> > Lets have a chat -- you do need to fight back some how. Present evidence that she is lying AND show the world that you are no longer that guy. You have made changes -- and that this is the past. My sense is that its TV type thing where you just talk honestly about this/present evidence that its not true/ and focus on what you have been doing for past five years. Charlie Rose?
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> >
> > --

Landon Thomas, Jr.
Financial Reporter
New York Times
[redacted]
http://topics.nytimes.com/top/reference/timestopics/people/t/landon_jr_thomas/index.html

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--
Landon Thomas, Jr.
Financial Reporter
New York Times
[redacted]
http://topics.nytimes.com/top/reference/timestopics/people/t/landon_jr_thomas/index.html

---

From: Michael Wolff [redacted]
Sent: 1/9/2015 6:33:09 PM
To: jeffrey E. [jeevacation@gmail.com]
Subject: Re:

Importance: High

Is Clinton willing to say he was not there? Btw, I've just filed a column for USA Today for Monday explaining how Dershowitz and Andrew allegations were picked up from unverified civil court docs, transferred to UK tabs, which go wild because of no libel rules on U.S. court papers, and then translated back here as "reported fact." Problem with [redacted] story is that tabs are too invested in present story line, and unlikely that the Times or WSJ will want to touch it--tho, depending on who is willing to on record, they might. There is another politico reporter I know who might do it, again, if the on-the-record sources are public people. Or, I will use it for New York Magazine, but that won't be until Feb. Can you still talk tomorrow? When works? Woody and Soon-Yi coming for dinner tonight. m

On Fri, Jan 9, 2015 at 1:20 PM, jeffrey E. <jeevacation@gmail.com> wrote:

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From: Thomas Jr., Landon [redacted]
Sent: 1/9/2015 6:57:01 PM
To: jeffrey E. [jeevacation@gmail.com]
Subject: Re: off the record

Importance: High

can talk now. [redacted]

On Fri, Jan 9, 2015 at 1:20 PM, jeffrey E. <jeevacation@gmail.com> wrote:

> number?
>
> On Fri, Jan 9, 2015 at 2:17 PM, Thomas Jr., Landon <[redacted]> wrote:
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>> Lets have a chat -- you do need to fight back some how. Present evidence that she is lying AND show the world that you are no longer that guy. You have made changes -- and that this is the past. My sense is that its TV type thing where you just talk honestly about this/present evidence that its not true/ and focus on what you have been doing for past five years. Charlie Rose?
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> Landon Thomas, Jr.
> Financial Reporter
> New York Times
> [redacted]
> http://topics.nytimes.com/top/reference/timestopics/people/t/landon_jr_thomas/index.html

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--
Landon Thomas, Jr.
Financial Reporter
New York Times
[redacted]
http://topics.nytimes.com/top/reference/timestopics/people/t/landon_jr_thomas/index.html

From: Michael Wolff [[redacted]]
Sent: 1/10/2015 2:22:04 PM
To: jeffrey E. [jeevacation@gmail.com]
Subject: Re:

Importance: High

Can you talk at noon? Probably need about 30 minutes. What is best number?

On Fri, Jan 9, 2015 at 1:44 PM, jeffrey E. <jeevacation@gmail.com> wrote:

> anytime tomorw ok
>
> On Fri, Jan 9, 2015 at 2:33 PM, Michael Wolff <[redacted]> wrote:
>
>> Is Clinton willing to say he was not there? Btw, I've just filed a column for USA Today for Monday explaining how Dershowitz and Andrew allegations were picked up from unverified civil court docs, transferred to UK tabs, which go wild because of no libel rules on U.S. court papers, and then translated back here as "reported fact." Problem with [redacted] story is that tabs are too invested in present story line, and unlikely that the Times or WSJ will want to touch it--tho, depending on who is willing to on record, they might. There is another politico reporter I know who might do it, again, if the on-the-record sources are public people. Or, I will use it for New York Magazine, but that won't be until Feb. Can you still talk tomorrow? When works? Woody and Soon-Yi coming for dinner tonight. m
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>> On Fri, Jan 9, 2015 at 1:20 PM, jeffrey E. <jeevacation@gmail.com> wrote:
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From: Michael Wolff [[redacted]]
Sent: 1/10/2015 4:43:39 PM
To: jeffrey E. [jeevacation@gmail.com]
Subject: Re:

Importance: High

Need 15

On Saturday, January 10, 2015, jeffrey E. <jeevacation@gmail.com> wrote:

> now good?
>
> On Sat, Jan 10, 2015 at 10:22 AM, Michael Wolff <[redacted]> wrote:
>
> > Can you talk at noon? Probably need about 30 minutes. What is best number?
> >
> > On Fri, Jan 9, 2015 at 1:44 PM, jeffrey E. <jeevacation@gmail.com> wrote:
> >
> > > anytime tomorw ok
> > >
> > > On Fri, Jan 9, 2015 at 2:33 PM, Michael Wolff <[redacted]> wrote:
> > >
> > > > Is Clinton willing to say he was not there? Btw, I've just filed a column for USA Today for Monday explaining how Dershowitz and Andrew allegations were picked up from unverified civil court docs, transferred to UK tabs, which go wild because of no libel rules on U.S. court papers, and then translated back here as "reported fact." Problem with [redacted] story is that tabs are too invested in present story line, and unlikely that the Times or WSJ will want to touch it--tho, depending on who is willing to on record, they might. There is another politico reporter I know who might do it, again, if the on-the-record sources are public people. Or, I will use it for New York Magazine, but that won't be until Feb. Can you still talk tomorrow? When works? Woody and Soon-Yi coming for dinner tonight. m
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From: Michael Wolff <[redacted]>
Sent: Friday, January 16, 2015 2:54 PM
To: jeffrey E.
Subject: Re: thoughts

Importance: High

I don't think I would put her out there. It probably seems too self-serving. But let's discuss. I have an idea about how to best use. Do you have time to continue our conversation post-3:00 today or tomorrow?

On Fri, Jan 16, 2015 at 4:36 AM, jeffrey E. <jeevacation@gmail.com> wrote:

> Out of respect and love for my former girlfrend I have tried to keep her out of my mess. she was never questioned , or subpeonaed. her name never surfaced.. I thought it right as a friend to protect her name. however during the entire [redacted] time she was my serious girlfriend. She traveled with me almost everywhere. each house, she is on the plane many many times. she knew and remembers [redacted] She never saw anything that [redacted] claims. She can confirm 1. I was never alone at the house. staff, friends etc. , no girl ever complained , not once. 2. jane doe 1 and 2 , were local strippers, that would call all the time asking if they could do massages. . . they left message after message. 3. We had a serious love relationship , I had promised her not to involve her in my story as it was so sordid. . she was 22 - 24 at the time. . 4 she has photos after photos showing we were together. . 5 she knows clinton was never on the island. 6 she knows no sex with steven hawking, she knows no sex with ehud as he was also never on the island. 6 she is 38 years old now and presentable. . 7 She woudl acknowledge that these girls asked to bring their friends . many of their best friends sat in the kitchen while they gave massages outside on the terrace. (no sex _). . they certainly looked over age. nevr heard anyone say otherwise. , Jeffrey never asked for underage, that is crazy, . . 8 . [redacted] answered the phones. served coffee. . there were many massage people , men women, aged up to 60.
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From: Thomas Jr., Landon <[redacted]>
Sent: Friday, January 16, 2015 7:45 PM
To: jeffrey E.
Subject: Re: How are you holding up?

Importance: High

I think the big issue is separating yourself from Andrew. I mean I can see why a statement might help in some way -- but its Andrew (not clinton and the rest) that is keeping the story alive. Until you are able to come forward and address that the story lives on. I mean in the end he had consensual sex with [redacted]. And [redacted] worked for you. The rest is atmospherics. You have moved on! People don't know that and cant accept that unless you say as much.

Does franc drama worry you? Am writing on it now...

On Fri, Jan 16, 2015 at 2:35 PM, jeffrey E. <jeevacation@gmail.com> wrote:

> very well, my reputation has admittedly taken a hit . however, again, more calls re currency than i can handle. in addition I am considering a statement and positon that Out of respect and love for my former girlfrend I have tried to keep her out of my mess. she was never questioned , or subpeonaed. her name never surfaced.. I thought it right as a friend to protect her name. however during the entire [redacted] time she was my serious girlfriend. She traveled with me almost everywhere. each house, she is on the plane many many times. she knew and remembers [redacted] She never saw anything that [redacted] claims. She can confirm 1. I was never alone at the house. staff, friends etc. , no girl ever complained , not once. 2. jane doe 1 and 2 , were local strippers, that would call all the time asking if they could do massages. . . they left message after message. 3. We had a serious love relationship , I had promised her not to involve her in my story as it was so sordid. . she was 22 - 24 at the time. . 4 she has photos after photos showing we were together. . 5 she knows clinton was never on the island. 6 she knows no sex with steven hawking, she knows no sex with ehud as he was also never on the island. 6 she is 38 years old now and presentable. . 7 She woudl acknowledge that these girls asked to bring their friends . many of their best friends sat in the kitchen while they gave massages outside on the terrace. (no sex _). . they certainly looked over age. nevr heard anyone say otherwise. , Jeffrey never asked for underage, that is crazy, . . 8 . [redacted] answered the phones. served coffee. . there were many massage people , men women, aged up to 60.
>
> On Fri, Jan 16, 2015 at 3:32 PM, Thomas Jr., Landon <[redacted]> wrote:
>
> > --
> >
> > Landon Thomas, Jr.
> > Financial Reporter
> > New York Times
> > [redacted]
> > http://topics.nytimes.com/top/reference/timestopics/people/t/landon_jr_thomas/index.html

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Landon Thomas, Jr.
Financial Reporter
New York Times
[redacted]
[redacted]
http://topics.nytimes.com/top/reference/timestopics/people/t/landon_jr_thomas/index.html

From: Thomas Jr., Landon <[redacted]>
Sent: Friday, January 16, 2015 7:56 PM
To: jeffrey E.
Subject: Re: How are you holding up?

Importance: High

that is old news -- buy dollar and take a nap? Kind of like buying Apple?

On Fri, Jan 16, 2015 at 2:52 PM, jeffrey E. <jeevacation@gmail.com> wrote:

> it is the begining world currencies are out of balance. brazil, etc
>
> On Fri, Jan 16, 2015 at 3:45 PM, Thomas Jr., Landon <[redacted]> wrote:
>
>> I think the big issue is separating yourself from Andrew. I mean I can see why a statement might help in some way -- but its Andrew (not clinton and the rest) that is keeping the story alive. Until you are able to come forward and address that the story lives on. I mean in the end he had consensual sex with [redacted]. And [redacted] worked for you. The rest is atmospherics. You have moved on! People don't know that and cant accept that unless you say as much.
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>>>> --
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>>>> Landon Thomas, Jr.

Financial Reporter
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Landon Thomas, Jr.
Financial Reporter
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--
Landon Thomas, Jr.
Financial Reporter
New York Times
[redacted]
http://topics.nytimes.com/top/reference/timestopics/people/t/landon_jr_thomas/index.html

From: Kathy Ruemmler [redacted]
Sent: 1/30/2015 5:26:02 PM
To: jeffrey E. [jeevacation@gmail.com]
Subject: Fwd:
Attachments: image006.png; image007.png; image005.jpg; image010.jpg; image001.jpg; image003.jpg; image008.png; image004.jpg; image002.jpg; image009.png

Importance: High

Did you see this? Privileged - Redacted

---------- Forwarded message ----------
From: <[redacted]>
Date: Jan 30, 2015 12:25 PM
Subject:
To: <[redacted]>
Cc:

POLITICS

Plenty Of Innuendo, But No Hard Evidence Of New Clinton Sex Scandal

Much-discussed documents in Jeffrey Epstein affair don't live up to the hype.

posted on Jan. 28, 2015, at 10:53 p.m.

Ken Bensinger

BuzzFeed News Reporter

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Carlo Allegri / Reuters

Over roughly the past month, coverage of Bill Clinton’s travels with financier and convicted sex offender Jeffrey Epstein have made their way from a thick stack of court documents into something approaching political mythology, propelled by a string of innuendo-laced reports hinting that the former president *must have been* in some way complicit when he voyaged with a billionaire known for preying on underage girls.

It’s a story with plenty to gape at, from horrific and excruciatingly detailed allegations against Epstein to the frequent presence of a former president who was, after all, nearly chased from office for a (consensual) affair with an intern.

But sometimes stories that seem too good to be true — just might be. A detailed review by a team of BuzzFeed News reporters of more than 2,000 pages of pleadings, depositions, affidavits, police reports, flight logs, and other documents filed in state and federal court found that many of the most provocative allegations about Clinton have little to no factual foundation and are exaggerated at best; that the documents — which appear to be the source for nearly all current reporting on this subject — themselves never suggest that Clinton was doing more than using his wealthy friend as a kind of global taxi service; and that many of the most lurid insinuations have been floated without any visible support from verifiable information.

While it’s still possible that some Rosetta stone of Clintonian depravity will surface from a pair of ongoing lawsuits involving Epstein, the fact that nothing even close to that has been dug up over the course of a half-dozen years of heated litigation should not be encouraging for Republican operatives and other Clinton critics hotly anticipating the very worst.

One sign that the connection is a bit weak: The lawyers who have used the Clinton link to help publicize their cases have been markedly vague on details.

When asked to present actual proof, Jack Scarola, the Florida attorney responsible for filing some of the most attention-grabbing documents that have come to light in recent weeks, warned darkly in an email of “extortionate threats, power, wealth or political pressure.”

“The time will come when all your questions will be answered,” said Scarola, who represents another trial attorney suing Epstein in Palm Beach County Court. “But that time is not now.”

Unwilling to wait, perhaps, publications on both sides of the Atlantic have gleefully dipped into those documents to publish breathless descriptions of Epstein’s “black book,” which contains a host of Clinton phone numbers (along with just about every other powerful figure in the Western world); dissections of handwritten flight logs for the financier’s private 727 aircraft that frequently capture Bubba at 30,000 feet; and extensive allegations from a woman, Virginia Roberts, who claims she was Epstein’s sex slave as a teenager and whose recollection places the former commander-in-chief on “Orgy Island” in 2002 to participate in a sexual romp, possibly with women who were not yet of age.

YORK & ‘ORGY ISLAND,’ SAYS TEEN SEX SLAVE
WORLD EXCLUSIVE
PROOF No. 1: BILL WAS ONE OF EPSTEIN’S FREQUENT FLYERS
224 JE, AM, SK
225
PRESIDENT BILL CLINTON, SK
226 JE, AM, GM, SK
Bill and Epstein’s assistant, SK, traveled together
One of Epstein’s jets was equipped with a bed for orgies
COURTESY MARK LAWRENCE NYC AVIATION

View this image ›

National Enquirer

Tellingly, many of those articles — which have notably increased in tempo in recent weeks following Roberts' late December accusation that noted attorney Alan Dershowitz was one of the men she was forced to have sex with — contain language underscoring the fact that none of this proves *anything.* "It should at this stage be stressed that the Mail has no evidence to corroborate this and other claims made by Virginia Roberts," the *Daily Mail* wrote in April. "Though her LinkedIn page claims a certificate in Swedish massage, there is no evidence that she ever actually treated Epstein to one," *Gawker* (in the most straightforward and clearest reporting on the documents to date) wrote last week. And the *National Enquirer* did not appear to rely on the court record for its conclusions, instead to the interpretation of an unnamed source who noted that "Bill's name is all over the legal papers, which are chock-full of sordid claims."

Clinton's discretion on matters of sexual restraint has attained permanent notoriety, so maybe it's natural to assume that particular leopard doesn't change his spots. But at this point, there is simply nothing to back those sordid claims up.

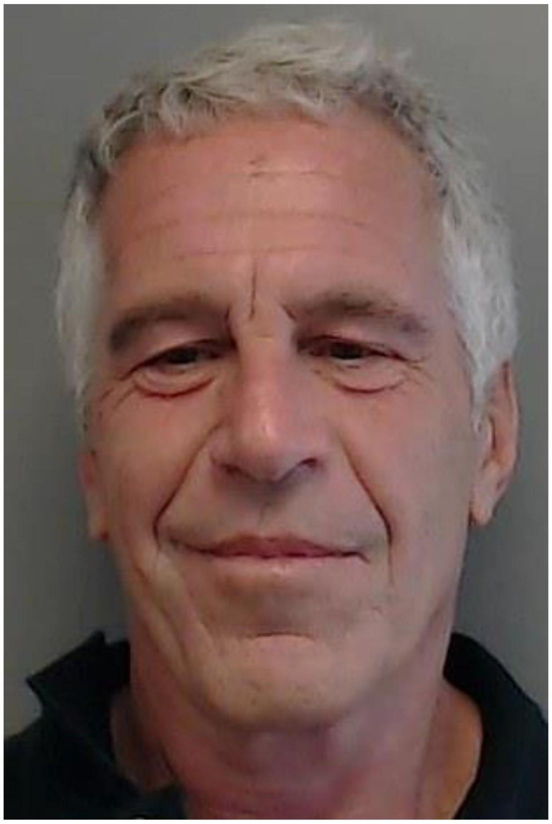
Here's what we **do** know:

Jeffrey Epstein is a secretive billionaire financier and Democratic donor who says he never attended college but whose "background is in physics." He owns properties in New York, Florida, New Mexico, London, and Paris and also owns an island in the U.S. Virgin Islands. He has at least two private jets, including the 727.

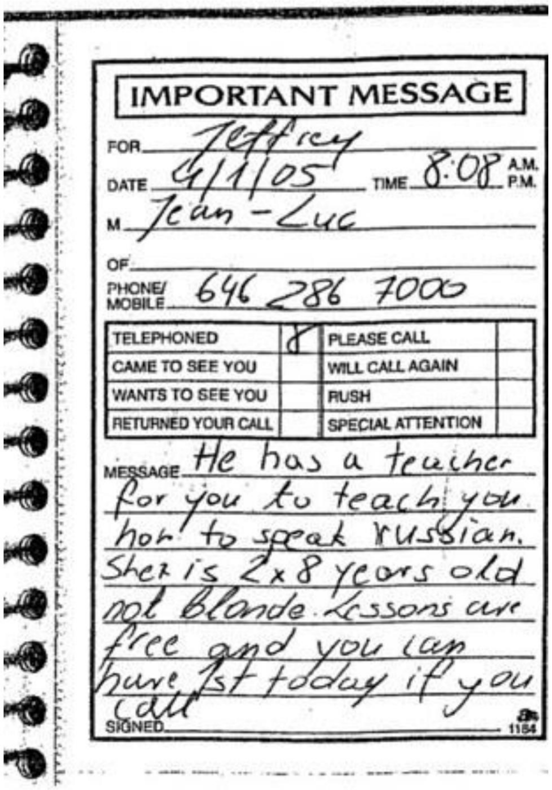
He has known Bill Clinton since about 1995, and his relationship with him grew stronger after he left office. There is no question they were friendly. Epstein's so-called "black book," which is less like something out of the Heidi Fleiss affair and more what most people would call a "phone directory," contains 21 numbers for getting in touch with Clinton, as well as emails and addresses.

But that 92-page directory also contains exactly the range of eye-poppingly famous and powerful contacts one might expect of an incredibly rich, connected person who owns Manhattan's largest private residence, from Tony Blair to Elie Wiesel to Courtney Love.

Epstein was long rumored to be a sexual libertine; "It is even said that he likes beautiful women as much as I do," real estate personality Donald Trump once said of his old friend. "And many of them are on the younger side."



Florida Dept of Law Enforcement



IMPORTANT MESSAGE

FOR Jeffrey

DATE 4/1/05 TIME 8:08 A.M. P.M.

M Jean-Luc

OF

PHONE/ MOBILE 646 286 7000

TELEPHONED	8	PLEASE CALL	
CAME TO SEE YOU		WILL CALL AGAIN	
WANTS TO SEE YOU		RUSH	
RETURNED YOUR CALL		SPECIAL ATTENTION	

MESSAGE He has a teacher
for you to teach you
how to speak russian.
She is 2x8 years old
not blonde. Lessons are
free and you can
have 1st today if you
call

SIGNED

1154

Palm Beach County Court

Epstein, in his Florida sex offender photo; at right, a phone message to Epstein from a modeling agent offering Russian lessons from a "2×8" year old girl.

In 2006, that reputation caught up with him, when he was arrested by the Palm Beach Police on charges of sexually molesting numerous underage girls. Police reports in the court record show that detectives found Epstein regularly paid very young women to give him massages that he turned into sexual encounters. He allegedly had a preference for very young women, whom he carefully groomed into increasingly extreme situations, including what some, including Roberts, allege to be sexual slavery.

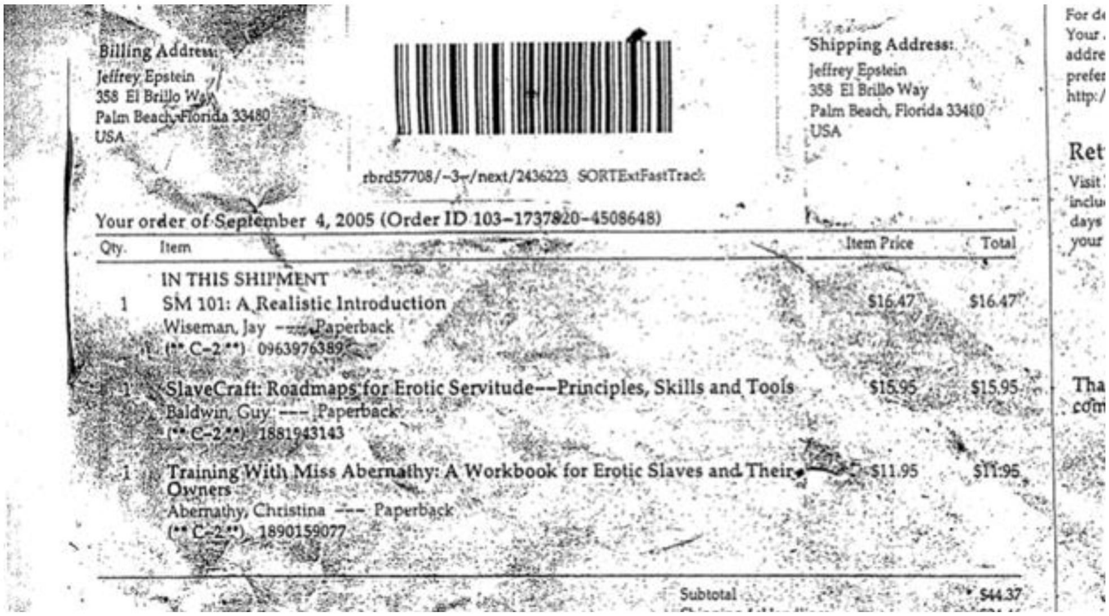
In total, 40 women were identified as possible victims of sexual abuse by Epstein, many of them teenagers at the time, including some younger than 14 years old. Epstein was originally charged with a variety of crimes, including sexual assault, rape, and witness tampering.

He avoided most of those charges as well as federal prosecution in late 2007 by agreeing to plead guilty in Florida court, a deal that Dershowitz, who was one of Epstein's lawyers, helped negotiate along with an all-star legal lineup that interestingly also included famed Clinton-hunter Ken Starr.

In the end, Epstein got 18 months in prison for a single count of soliciting an underage prostitute, of which he served 13 months. He is now a registered sex offender who lists his primary residence as the U.S. Virgin Islands.

In a pleading late last month in federal court, attorneys for Roberts allege that "Dershowitz helped negotiate an agreement with a provision that provided protection for himself against criminal prosecution." Dershowitz has denied these charges vigorously, calling them "salacious and false" and, possibly more importantly, "completely irrelevant" in a Jan. 12 filing.

Despite what some called among the most exhaustive investigations in Palm Beach Police history — which dug up such evidence as an Amazon receipt for Epstein's purchase of titles including "Training With Miss Abernathy: A Workbook for Exotic Slaves and Their Owners" — there is nothing in the police record suggesting any other men were involved in Epstein's predatory behavior.



Billing Address:
Jeffrey Epstein
358 El Brillo Way
Palm Beach, Florida 33480
USA

Shipping Address:
Jeffrey Epstein
358 El Brillo Way
Palm Beach, Florida 33480
USA

rbrd57708/-3-/next/2436223 SORTExtFastTrack

Your order of September 4, 2005 (Order ID 103-1737820-4508648)

Qty.	Item	Item Price	Total
	IN THIS SHIPMENT		
1	SM 101: A Realistic Introduction Wiseman, Jay --- Paperback (** C-2 **) 0963976389	$16.47	$16.47
1	SlaveCraft: Roadmaps for Erotic Servitude--Principles, Skills and Tools Baldwin, Guy --- Paperback (** C-2 **) 1881943143	$15.95	$15.95
1	Training With Miss Abernathy: A Workbook for Erotic Slaves and Their Owners Abernathy, Christina --- Paperback (** C-2 **) 1890159077	$11.95	$11.95
	Subtotal		$44.37

View this image ›

Palm Beach County Court

The criminal case provoked numerous lawsuits from women alleging they were victims of Epstein's proclivities, followed by secret settlements with more than two dozen of them. One firm bringing some of those cases employed a young lawyer named Bradley Edwards, who managed some of the cases. In 2009, a founding partner at the firm, Scott Rothstein, fled the country before ultimately returning to plead guilty of running a $1.2 billion Ponzi scheme built around recruiting investors to buy stakes in litigation settlements that turned out to be phony.

As details of the fraud emerged, Epstein sued Rothstein and Edwards in Palm Beach County Court for racketeering, alleging, among other things, that they dangled Bill Clinton's association with Epstein as a lure to investors, implying that settlements would be fast and sizable. Epstein ultimately dropped his suit in 2012, but by that time, Edwards had countersued for malicious prosecution and abuse of process.

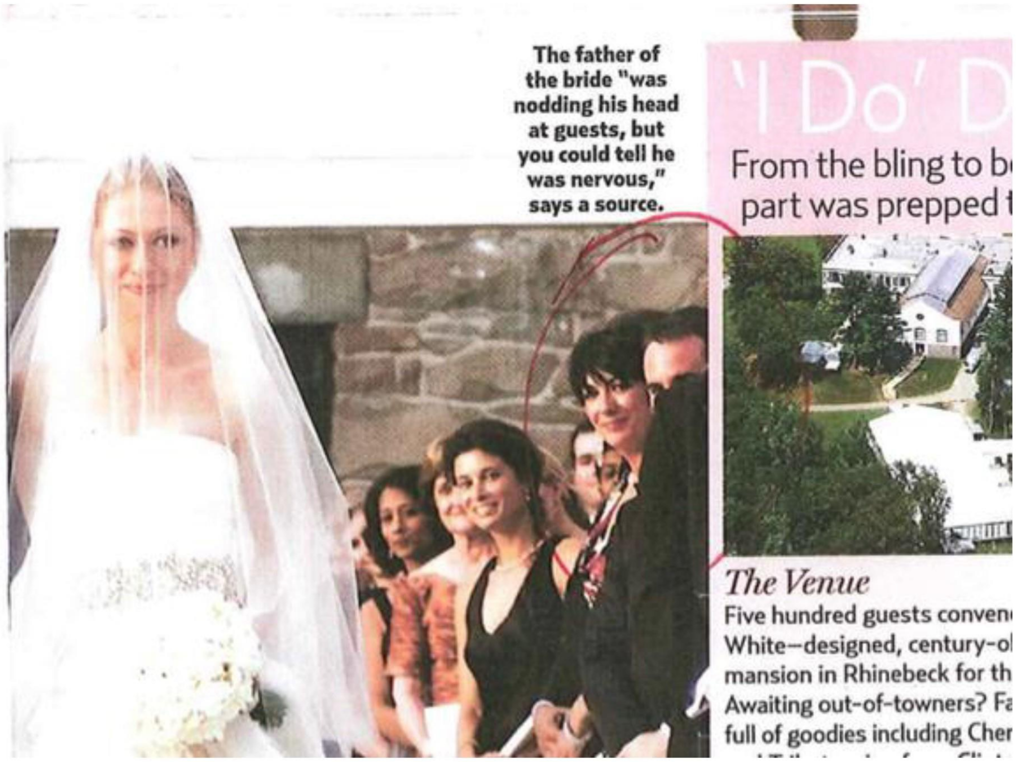
That case, along with a claim by Virginia Roberts against the federal government over the 2007 prosecution deal in district court (which she filed as a "Jane Doe" in 2008), are still pending and are the source of most of the scant information about Clinton that has appeared. Scarola, who in the past sued Chiquita over payments to violent leftist Colombian rebels and won a $1.45 billion verdict over Morgan Stanley (that was later overturned), is the lawyer bringing the suit in county court in West Palm Beach, while Paul Cassell, a former federal judge known for his critical take on mandatory-minimum sentences, mans the federal case four blocks away.

Neither Cassell nor Edwards responded to requests for comment.

It is primarily from pleadings in those cases that the press has been getting a glimpse inside the lifestyle of Epstein, and, by extension, Clinton. "Edwards had sound legal basis for believing former President Clinton had relevant and discoverable information," part of one pleading reads. Roberts, in her case, alleges that Epstein forced her "to be sexually exploited by Defendant's adult male peers, including royalty, politicians, academicians, businessmen, and/or other professional and personal acquaintances," which, Edwards elsewhere claims, are "categories Clinton and acquaintances of Clinton fall into."

Police reports entered into the record go into stomach-wrenching detail about Epstein's alleged exploits with the girls and women he recruited and paid for massages that became sexual acts, and mention other women participating as well. Epstein's longtime friend, the socialite Ghislaine Maxwell, is accused of taking part, while his personal assistant, Sarah Kellen, is described procuring young woman for him.

But neither of those women has ever said a word about Clinton being involved. Maxwell, for her part, has never been deposed. She canceled a deposition in 2010, claiming she had to return to England indefinitely due to family illness, but was soon thereafter photographed by *Us Weekly* at Chelsea Clinton's wedding in Rhinebeck, New York.



The father of
the bride "was
nodding his head
at guests, but
you could tell he
was nervous,"
says a source.

'I Do' D
From the bling to b
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Us Weekly

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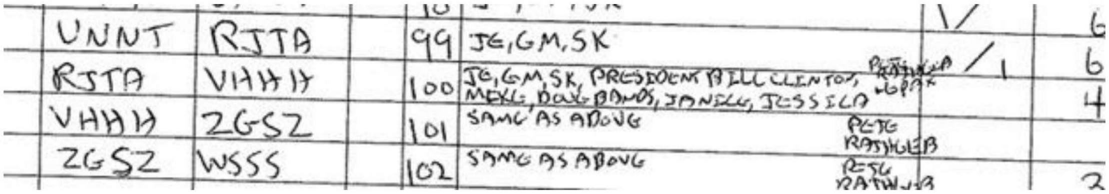

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	ZGSZ	WSSS		102	SAME AS ABOVE	PETE RATHGEB		2

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Palm Beach County Court

Among the other people who most frequently flew with Clinton are Maxwell and Adriana Ross (formerly Adriana Mucinska), another Epstein assistant and a former model. The logs also show him flying with former advisor Ira Magaziner, ex-Transportation Secretary Rodney Slater, and fashion model Naomi Campbell.

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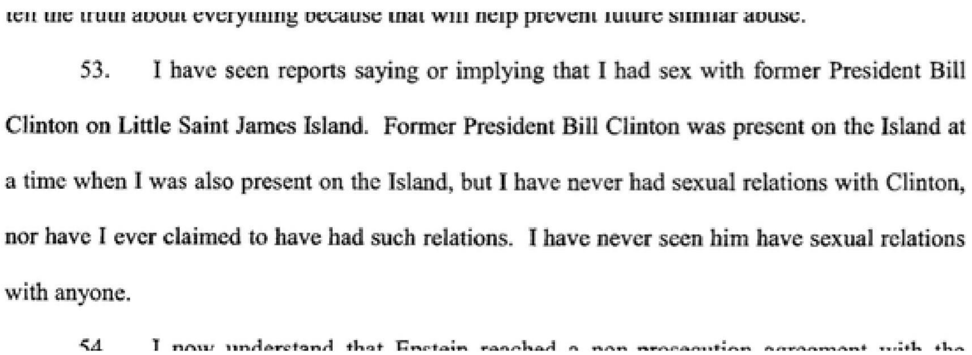

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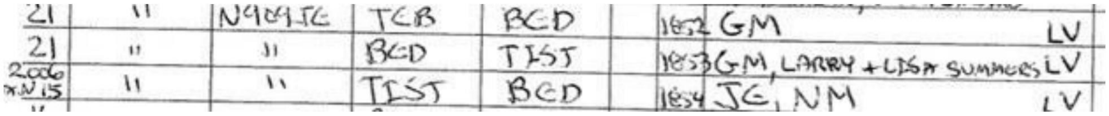

21	"	N909JE	TCB	BED		1852 GM	LV
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Palm Beach County Court

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BuzzFeed News reporters Alex Campbell, Kyle Blaine, and Megan Apper contributed to this report.

Kathryn H. Ruemmler

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Fax: [redacted]
Email: [redacted]
http://www.lw.com

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Latham & Watkins LLP

From: Kathy Ruemmler [redacted]
Sent: 1/30/2015 7:05:49 PM
To: jeffrey E. [jeevacation@gmail.com]
Subject: Re:
Attachments: image010.jpg; image006.png; image002.jpg; image008.png; image009.png; image007.png; image004.jpg; image005.jpg; image003.jpg; image001.jpg

Importance: High

[redacted]

On Jan 30, 2015 2:04 PM, "jeffrey E." <jeevacation@gmail.com> wrote:

> number?
>
> On Fri, Jan 30, 2015 at 1:26 PM, Kathy Ruemmler <[redacted]> wrote:
>
>> Did you see this? Privileged - Redacted
>>
>> ---------- Forwarded message ----------
>> From: <[redacted]>
>> Date: Jan 30, 2015 12:25 PM
>> Subject:
>> To: <[redacted]>
>> Cc:
>>
>> POLITICS
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>> # Plenty Of Innuendo, But No Hard Evidence Of New Clinton Sex Scandal
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>> **Much-discussed documents in Jeffrey Epstein affair don't live up to the hype.**
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>> posted on Jan. 28, 2015, at 10:53 p.m.
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>> **Ken Bensinger**
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Carlo Allegri / Reuters

Over roughly the past month, coverage of Bill Clinton's travels with financier and convicted sex offender Jeffrey Epstein have made their way from a thick stack of court documents into something approaching political mythology, propelled by a string of innuendo-laced reports hinting that the former president *must have been* in some way complicit when he voyaged with a billionaire known for preying on underage girls.

It's a story with plenty to gape at, from horrific and excruciatingly detailed allegations against Epstein to the frequent presence of a former president who was, after all, nearly chased from office for a (consensual) affair with an intern.

But sometimes stories that seem too good to be true — just might be. A detailed review by a team of BuzzFeed News reporters of more than 2,000 pages of pleadings, depositions, affidavits, police reports, flight logs, and other documents filed in state and federal court found that many of the most provocative allegations about Clinton have little to no factual foundation and are exaggerated at best; that the documents — which appear to be the source for nearly all current reporting on this subject — themselves never suggest that Clinton was doing more than using his wealthy friend as a kind of global taxi service; and that many of the most lurid insinuations have been floated without any visible support from verifiable information.

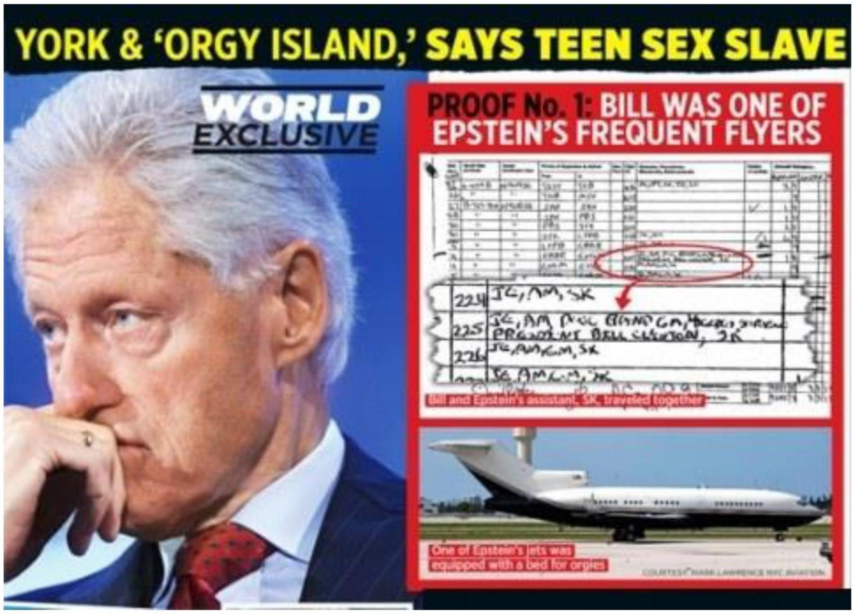
While it's still possible that some Rosetta stone of Clintonian depravity will surface from a pair of ongoing lawsuits involving Epstein, the fact that nothing even close to that has been dug up over the course of a half-dozen years of heated litigation should not be encouraging for Republican operatives and other Clinton critics hotly anticipating the very worst.

One sign that the connection is a bit weak: The lawyers who have used the Clinton link to help publicize their cases have been markedly vague on details.

When asked to present actual proof, Jack Scarola, the Florida attorney responsible for filing some of the most attention-grabbing documents that have come to light in recent weeks, warned darkly in an email of "extortionate threats, power, wealth or political pressure."

"The time will come when all your questions will be answered," said Scarola, who represents another trial attorney suing Epstein in Palm Beach County Court. "But that time is not now."

Unwilling to wait, perhaps, publications on both sides of the Atlantic have gleefully dipped into those documents to publish breathless descriptions of Epstein's "black book," which contains a host of Clinton phone numbers (along with just about every other powerful figure in the Western world); dissections of handwritten flight logs for the financier's private 727 aircraft that frequently capture Bubba at 30,000 feet; and extensive allegations from a woman, Virginia Roberts, who claims she was Epstein's sex slave as a teenager and whose recollection places the former commander-in-chief on "Orgy Island" in 2002 to participate in a sexual romp, possibly with women who were not yet of age.


YORK & 'ORGY ISLAND,' SAYS TEEN SEX SLAVE
WORLD EXCLUSIVE
PROOF No. 1: BILL WAS ONE OF EPSTEIN'S FREQUENT FLYERS
Bill and Epstein's assistant, SK, traveled together
One of Epstein's jets was equipped with a bed for orgies
COURTESY MARK LAWRENCE NYC AVIATION

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National Enquirer

Tellingly, many of those articles — which have notably increased in tempo in recent weeks following Roberts' late December accusation that noted attorney Alan Dershowitz was one of the men she was forced to have sex with — contain language underscoring the fact that none of this proves *anything.* "It should at this stage be stressed that the Mail has no evidence to corroborate this and other claims made by Virginia Roberts," the *Daily Mail* wrote in April. "Though her LinkedIn page claims a certificate in Swedish massage, there is no evidence that she ever actually treated Epstein to one," *Gawker* (in the most straightforward and clearest reporting on the documents to date) wrote last week. And the *National Enquirer* did not appear to rely on the court record for its conclusions, instead to the interpretation of an unnamed source who noted that "Bill's name is all over the legal papers, which are chock-full of sordid claims."

Clinton's discretion on matters of sexual restraint has attained permanent notoriety, so maybe it's natural to assume that particular leopard doesn't change his spots. But at this point, there is simply nothing to back those sordid claims up.

Here's what we **do** know:

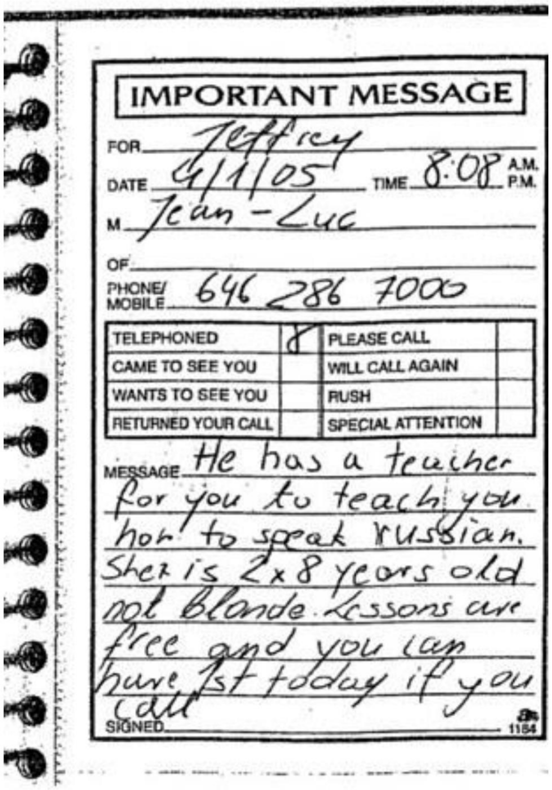
Jeffrey Epstein is a secretive billionaire financier and Democratic donor who says he never attended college but whose "background is in physics." He owns properties in New York, Florida, New Mexico, London, and Paris and also owns an island in the U.S. Virgin Islands. He has at least two private jets, including the 727.

He has known Bill Clinton since about 1995, and his relationship with him grew stronger after he left office. There is no question they were friendly. Epstein's so-called "black book," which is less like something out of the Heidi Fleiss affair and more what most people would call a "phone directory," contains 21 numbers for getting in touch with Clinton, as well as emails and addresses.

But that 92-page directory also contains exactly the range of eye-poppingly famous and powerful contacts one might expect of an incredibly rich, connected person who owns Manhattan's largest private residence, from Tony Blair to Elie Wiesel to Courtney Love.

Epstein was long rumored to be a sexual libertine; "It is even said that he likes beautiful women as much as I do," real estate personality Donald Trump once said of his old friend. "And many of them are on the younger side."

Florida Dept of Law Enforcement



IMPORTANT MESSAGE

FOR Jeffrey

DATE 4/1/05 TIME 8:08 A.M. P.M.

M Jean-Luc

OF

PHONE/ MOBILE 646 286 7000

TELEPHONED	✓	PLEASE CALL	
CAME TO SEE YOU		WILL CALL AGAIN	
WANTS TO SEE YOU		RUSH	
RETURNED YOUR CALL		SPECIAL ATTENTION	

MESSAGE He has a teacher for you to teach you how to speak Russian. Shez is 2x8 years old not Blonde. Lessons are free and you can have 1st today if you call

SIGNED

1154

Palm Beach County Court

Epstein, in his Florida sex offender photo; at right, a phone message to Epstein from a modeling agent offering Russian lessons from a "2×8" year old girl.

In 2006, that reputation caught up with him, when he was arrested by the Palm Beach Police on charges of sexually molesting numerous underage girls. Police reports in the court record show that detectives found Epstein regularly paid very young women to give him massages that he turned into sexual encounters. He allegedly had a preference for very young women, whom he carefully groomed into increasingly extreme situations, including what some, including Roberts, allege to be sexual slavery.

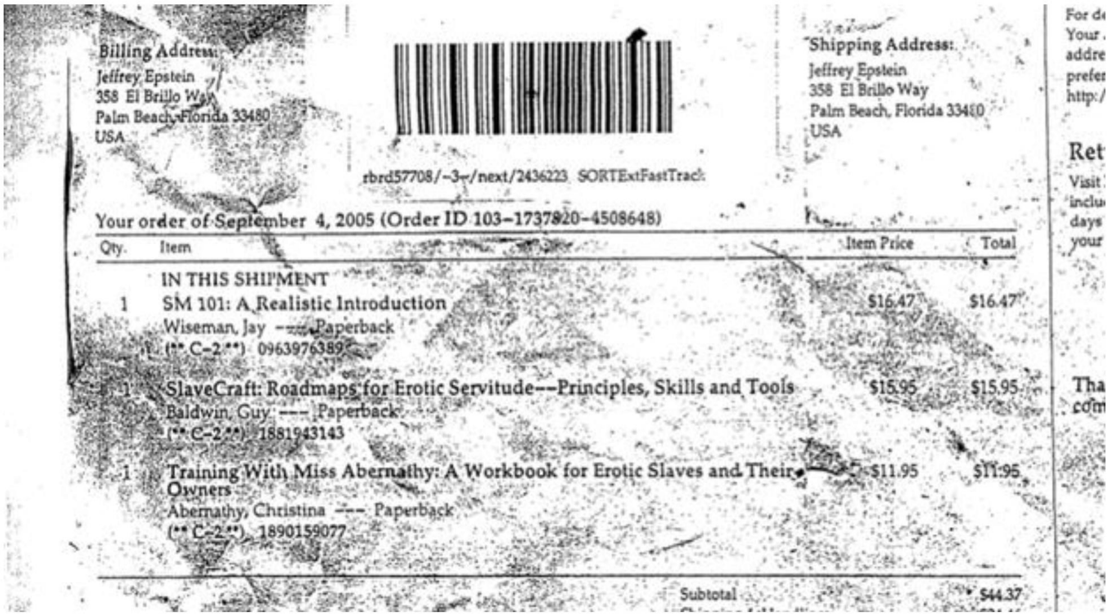
In total, 40 women were identified as possible victims of sexual abuse by Epstein, many of them teenagers at the time, including some younger than 14 years old. Epstein was originally charged with a variety of crimes, including sexual assault, rape, and witness tampering.

He avoided most of those charges as well as federal prosecution in late 2007 by agreeing to plead guilty in Florida court, a deal that Dershowitz, who was one of Epstein's lawyers, helped negotiate along with an all-star legal lineup that interestingly also included famed Clinton-hunter Ken Starr.

In the end, Epstein got 18 months in prison for a single count of soliciting an underage prostitute, of which he served 13 months. He is now a registered sex offender who lists his primary residence as the U.S. Virgin Islands.

In a pleading late last month in federal court, attorneys for Roberts allege that "Dershowitz helped negotiate an agreement with a provision that provided protection for himself against criminal prosecution." Dershowitz has denied these charges vigorously, calling them "salacious and false" and, possibly more importantly, "completely irrelevant" in a Jan. 12 filing.

Despite what some called among the most exhaustive investigations in Palm Beach Police history — which dug up such evidence as an Amazon receipt for Epstein's purchase of titles including "Training With Miss Abernathy: A Workbook for Exotic Slaves and Their Owners" — there is nothing in the police record suggesting any other men were involved in Epstein's predatory behavior.



Billing Address:
Jeffrey Epstein
358 El Brillo Way
Palm Beach, Florida 33480
USA

Shipping Address:
Jeffrey Epstein
358 El Brillo Way
Palm Beach, Florida 33480
USA

rbrd57708/-3-/next/2436223 SORTExtFastTrack

Your order of September 4, 2005 (Order ID 103-1737820-4508648)

Qty.	Item	Item Price	Total
	IN THIS SHIPMENT		
1	SM 101: A Realistic Introduction Wiseman, Jay --- Paperback (** C-2 **) 0963976389	$16.47	$16.47
1	SlaveCraft: Roadmaps for Erotic Servitude--Principles, Skills and Tools Baldwin, Guy --- Paperback (** C-2 **) 1881943143	$15.95	$15.95
1	Training With Miss Abernathy: A Workbook for Erotic Slaves and Their Owners Abernathy, Christina --- Paperback (** C-2 **) 1890159077	$11.95	$11.95
	Subtotal		$44.37

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Palm Beach County Court

The criminal case provoked numerous lawsuits from women alleging they were victims of Epstein's proclivities, followed by secret settlements with more than two dozen of them. One firm bringing some of those cases employed a young lawyer named Bradley Edwards, who managed some of the cases. In 2009, a founding partner at the firm, Scott Rothstein, fled the country before ultimately returning to plead guilty of running a $1.2 billion Ponzi scheme built around recruiting investors to buy stakes in litigation settlements that turned out to be phony.

As details of the fraud emerged, Epstein sued Rothstein and Edwards in Palm Beach County Court for racketeering, alleging, among other things, that they dangled Bill Clinton's association with Epstein as a lure to investors, implying that settlements would be fast and sizable. Epstein ultimately dropped his suit in 2012, but by that time, Edwards had countersued for malicious prosecution and abuse of process.

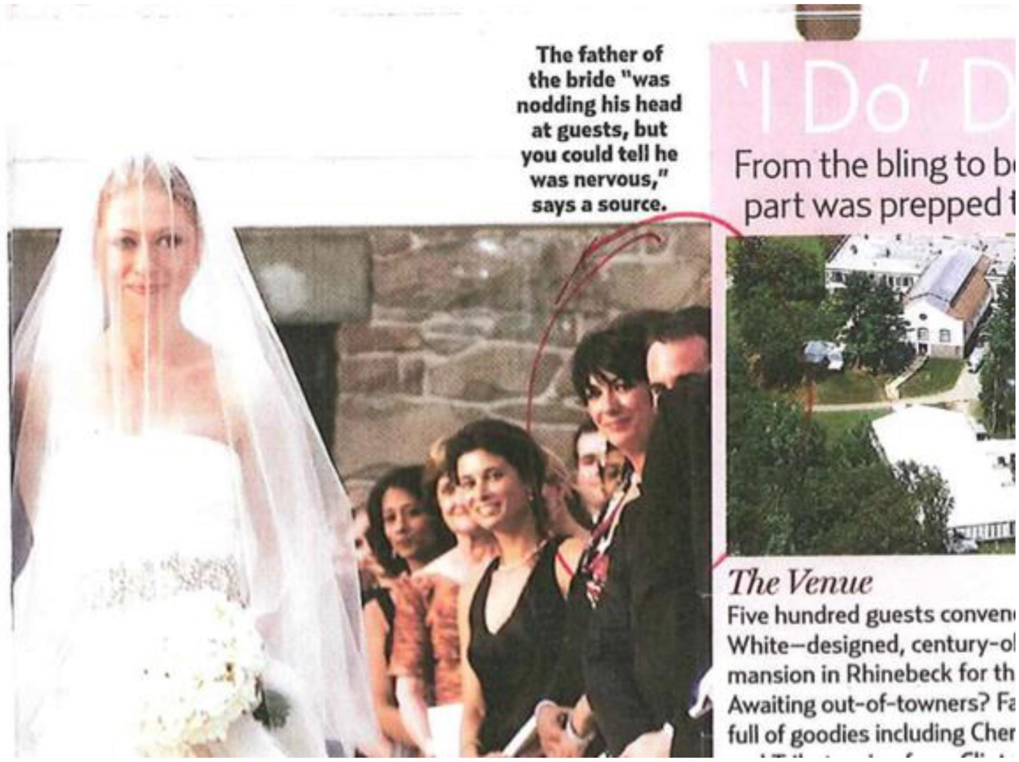
That case, along with a claim by Virginia Roberts against the federal government over the 2007 prosecution deal in district court (which she filed as a "Jane Doe" in 2008), are still pending and are the source of most of the scant information about Clinton that has appeared. Scarola, who in the past sued Chiquita over payments to violent leftist Colombian rebels and won a $1.45 billion verdict over Morgan Stanley (that was later overturned), is the lawyer bringing the suit in county court in West Palm Beach, while Paul Cassell, a former federal judge known for his critical take on mandatory-minimum sentences, mans the federal case four blocks away.

Neither Cassell nor Edwards responded to requests for comment.

It is primarily from pleadings in those cases that the press has been getting a glimpse inside the lifestyle of Epstein, and, by extension, Clinton. "Edwards had sound legal basis for believing former President Clinton had relevant and discoverable information," part of one pleading reads. Roberts, in her case, alleges that Epstein forced her "to be sexually exploited by Defendant's adult male peers, including royalty, politicians, academicians, businessmen, and/or other professional and personal acquaintances," which, Edwards elsewhere claims, are "categories Clinton and acquaintances of Clinton fall into."

Police reports entered into the record go into stomach-wrenching detail about Epstein's alleged exploits with the girls and women he recruited and paid for massages that became sexual acts, and mention other women participating as well. Epstein's longtime friend, the socialite Ghislaine Maxwell, is accused of taking part, while his personal assistant, Sarah Kellen, is described procuring young woman for him.

But neither of those women has ever said a word about Clinton being involved. Maxwell, for her part, has never been deposed. She canceled a deposition in 2010, claiming she had to return to England indefinitely due to family illness, but was soon thereafter photographed by *Us Weekly* at Chelsea Clinton's wedding in Rhinebeck, New York.


The father of the bride "was nodding his head at guests, but you could tell he was nervous," says a source.
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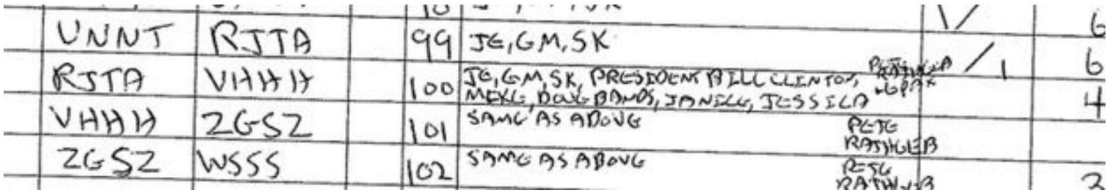

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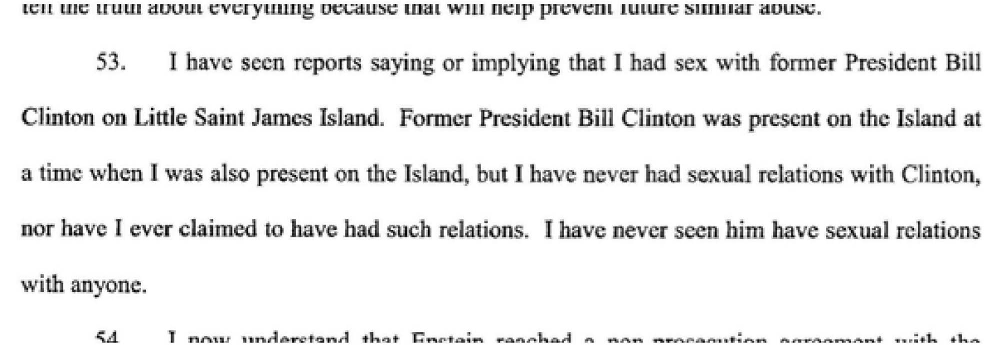

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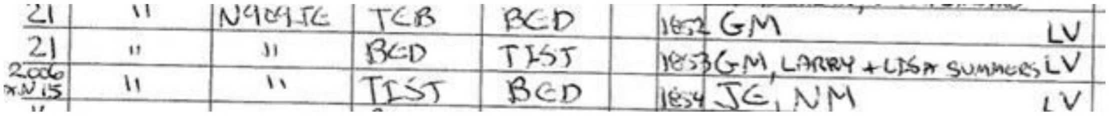

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From: Kathy Ruemmler [redacted]
Sent: 1/31/2015 2:46:14 AM
To: jeffrey E. [jeevacation@gmail.com]
Subject: Re:
Attachments: image010.jpg; image005.jpg; image009.png; image004.jpg; image002.jpg; image007.png; image001.jpg; image008.png; image003.jpg; image006.png

Importance: High

Well, I think, but not because of me. The existential crisis thing is not a PMS or menopausal pose.

On Jan 30, 2015 9:16 PM, "jeffrey E." <jeevacation@gmail.com> wrote:

> how did musk call go?
>
> On Fri, Jan 30, 2015 at 2:05 PM, Kathy Ruemmler <[redacted]> wrote:
>
> > [redacted]
> >
> > On Jan 30, 2015 2:04 PM, "jeffrey E." <jeevacation@gmail.com> wrote:
> >
> > > number?
> > >
> > > On Fri, Jan 30, 2015 at 1:26 PM, Kathy Ruemmler [redacted] wrote:
> > >
> > > > Did you see this? Privileged - Redacted
> > > >
> > > > ---------- Forwarded message ----------
> > > > From: <[redacted]>
> > > > Date: Jan 30, 2015 12:25 PM
> > > > Subject:
> > > > To: <[redacted]
> > > > Cc:
> > > >
> > > > POLITICS
> > > >
> > > > # Plenty Of Innuendo, But No Hard Evidence Of New Clinton Sex Scandal
> > > >
> > > > **Much-discussed documents in Jeffrey Epstein affair don't live up to the hype.**
> > > >
> > > > posted on Jan. 28, 2015, at 10:53 p.m.
> > > >
> > > >
> > > >
> > > > **Ken Bensinger**
> > > >
> > > > BuzzFeed News Reporter
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Carlo Allegri / Reuters

Over roughly the past month, coverage of Bill Clinton's travels with financier and convicted sex offender Jeffrey Epstein have made their way from a thick stack of court documents into something approaching political mythology, propelled by a string of innuendo-laced reports hinting that the former president *must have been* in some way complicit when he voyaged with a billionaire known for preying on underage girls.

It's a story with plenty to gape at, from horrific and excruciatingly detailed allegations against Epstein to the frequent presence of a former president who was, after all, nearly chased from office for a (consensual) affair with an intern.

But sometimes stories that seem too good to be true — just might be. A detailed review by a team of BuzzFeed News reporters of more than 2,000 pages of pleadings, depositions, affidavits, police reports, flight logs, and other documents filed in state and federal court found that many of the most provocative allegations about Clinton have little to no factual foundation and are exaggerated at best; that the documents — which appear to be the source for nearly all current reporting on this subject — themselves never suggest that Clinton was doing more than using his wealthy friend as a kind of global taxi service; and that many of the most lurid insinuations have been floated without any visible support from verifiable information.

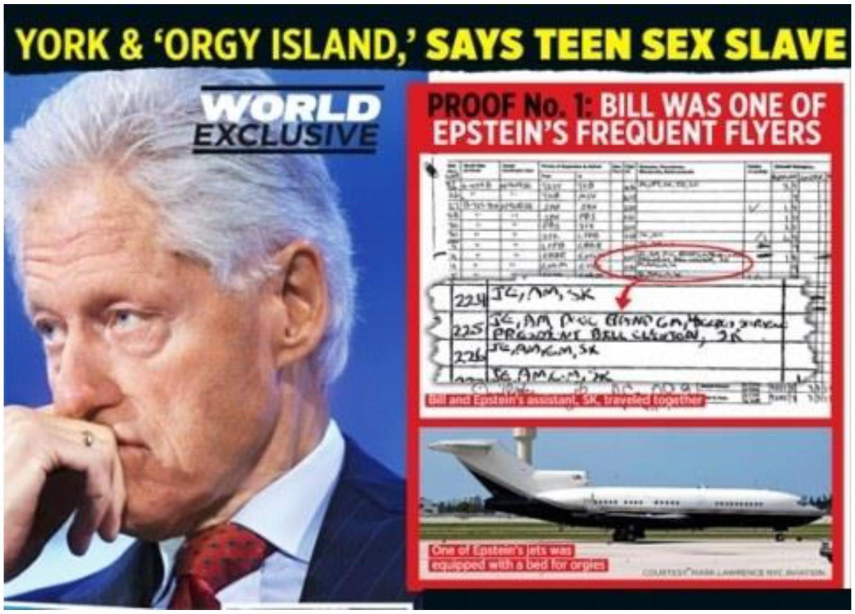
While it's still possible that some Rosetta stone of Clintonian depravity will surface from a pair of ongoing lawsuits involving Epstein, the fact that nothing even close to that has been dug up over the course of a half-dozen years of heated litigation should not be encouraging for Republican operatives and other Clinton critics hotly anticipating the very worst.

One sign that the connection is a bit weak: The lawyers who have used the Clinton link to help publicize their cases have been markedly vague on details.

When asked to present actual proof, Jack Scarola, the Florida attorney responsible for filing some of the most attention-grabbing documents that have come to light in recent weeks, warned darkly in an email of "extortionate threats, power, wealth or political pressure."

"The time will come when all your questions will be answered," said Scarola, who represents another trial attorney suing Epstein in Palm Beach County Court. "But that time is not now."

Unwilling to wait, perhaps, publications on both sides of the Atlantic have gleefully dipped into those documents to publish breathless descriptions of Epstein's "black book," which contains a host of Clinton phone numbers (along with just about every other powerful figure in the Western world); dissections of handwritten flight logs for the financier's private 727 aircraft that frequently capture Bubba at 30,000 feet; and extensive allegations from a woman, Virginia Roberts, who claims she was Epstein's sex slave as a teenager and whose recollection places the former commander-in-chief on "Orgy Island" in 2002 to participate in a sexual romp, possibly with women who were not yet of age.


YORK & 'ORGY ISLAND,' SAYS TEEN SEX SLAVE
WORLD EXCLUSIVE
PROOF No. 1: BILL WAS ONE OF EPSTEIN'S FREQUENT FLYERS
224 JE, AM, SK
225 JE, AM, [illegible] PRESIDENT BILL CLINTON, SK
226 JE, AM, GM, SK
JE, AM, GM, SK
Bill and Epstein's assistant, SK, traveled together
One of Epstein's jets was equipped with a bed for orgies
COURTESY MARK LAWRENCE NYC AVIATION

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National Enquirer

Tellingly, many of those articles — which have notably increased in tempo in recent weeks following Roberts' late December accusation that noted attorney Alan Dershowitz was one of the men she was forced to have sex with — contain language underscoring the fact that none of this proves *anything.* "It should at this stage be stressed that the Mail has no evidence to corroborate this and other claims made by Virginia Roberts," the *Daily Mail* wrote in April. "Though her LinkedIn page claims a certificate in Swedish massage, there is no evidence that she ever actually treated Epstein to one," *Gawker* (in the most straightforward and clearest reporting on the documents to date) wrote last week. And the *National Enquirer* did not appear to rely on the court record for its conclusions, instead to the interpretation of an unnamed source who noted that "Bill's name is all over the legal papers, which are chock-full of sordid claims."

Clinton's discretion on matters of sexual restraint has attained permanent notoriety, so maybe it's natural to assume that particular leopard doesn't change his spots. But at this point, there is simply nothing to back those sordid claims up.

Here's what we **do** know:

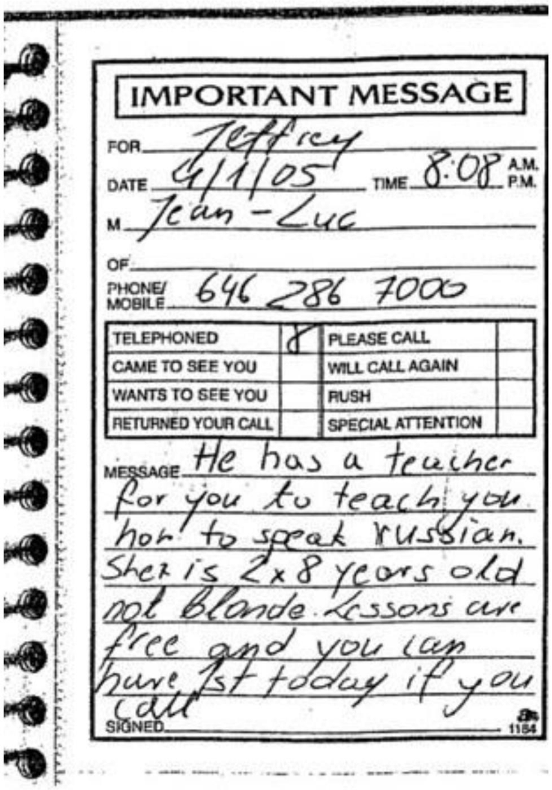
Jeffrey Epstein is a secretive billionaire financier and Democratic donor who says he never attended college but whose "background is in physics." He owns properties in New York, Florida, New Mexico, London, and Paris and also owns an island in the U.S. Virgin Islands. He has at least two private jets, including the 727.

He has known Bill Clinton since about 1995, and his relationship with him grew stronger after he left office. There is no question they were friendly. Epstein's so-called "black book," which is less like something out of the Heidi Fleiss affair and more what most people would call a "phone directory," contains 21 numbers for getting in touch with Clinton, as well as emails and addresses.

But that 92-page directory also contains exactly the range of eye-poppingly famous and powerful contacts one might expect of an incredibly rich, connected person who owns Manhattan's largest private residence, from Tony Blair to Elie Wiesel to Courtney Love.

Epstein was long rumored to be a sexual libertine; "It is even said that he likes beautiful women as much as I do," real estate personality Donald Trump once said of his old friend. "And many of them are on the younger side."

Florida Dept of Law Enforcement



IMPORTANT MESSAGE

FOR Jeffrey

DATE 4/1/05 TIME 8:08 A.M. P.M.

M Jean-Luc

OF

PHONE/MOBILE 646 286 7000

TELEPHONED	✓	PLEASE CALL	
CAME TO SEE YOU		WILL CALL AGAIN	
WANTS TO SEE YOU		RUSH	
RETURNED YOUR CALL		SPECIAL ATTENTION	

MESSAGE He has a teacher for you to teach you how to speak russian. Sher is 2x8 years old not Blonde. Lessons are free and you can have 1st today if you call

SIGNED

1184

Palm Beach County Court

Epstein, in his Florida sex offender photo; at right, a phone message to Epstein from a modeling agent offering Russian lessons from a “2×8” year old girl.

In 2006, that reputation caught up with him, when he was arrested by the Palm Beach Police on charges of sexually molesting numerous underage girls. Police reports in the court record show that detectives found Epstein regularly paid very young women to give him massages that he turned into sexual encounters. He allegedly had a preference for very young women, whom he carefully groomed into increasingly extreme situations, including what some, including Roberts, allege to be sexual slavery.

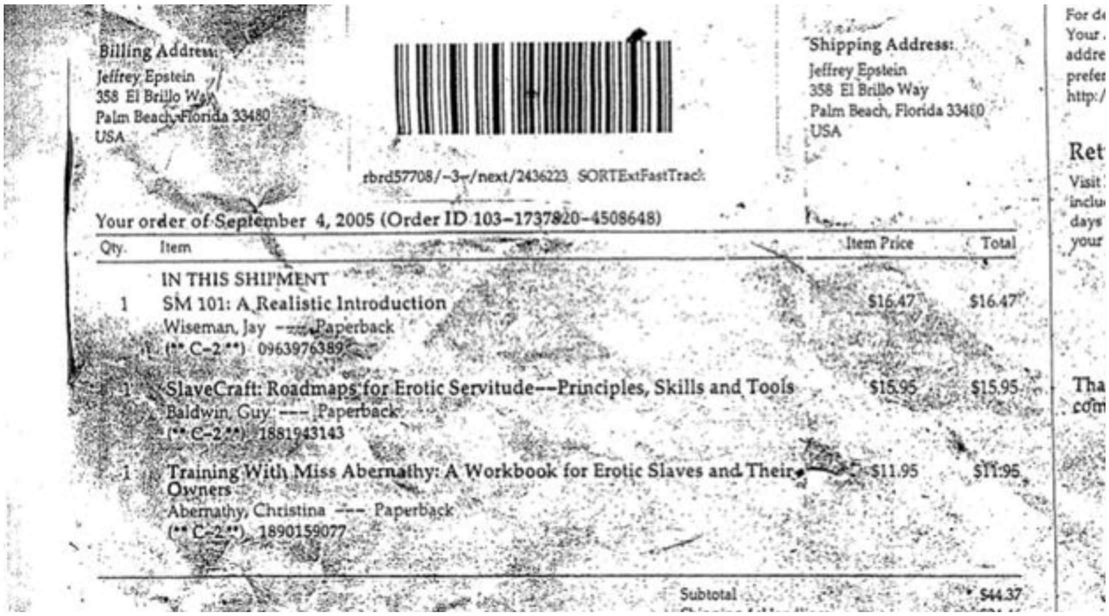
In total, 40 women were identified as possible victims of sexual abuse by Epstein, many of them teenagers at the time, including some younger than 14 years old. Epstein was originally charged with a variety of crimes, including sexual assault, rape, and witness tampering.

He avoided most of those charges as well as federal prosecution in late 2007 by agreeing to plead guilty in Florida court, a deal that Dershowitz, who was one of Epstein’s lawyers, helped negotiate along with an all-star legal lineup that interestingly also included famed Clinton-hunter Ken Starr.

In the end, Epstein got 18 months in prison for a single count of soliciting an underage prostitute, of which he served 13 months. He is now a registered sex offender who lists his primary residence as the U.S. Virgin Islands.

In a pleading late last month in federal court, attorneys for Roberts allege that “Dershowitz helped negotiate an agreement with a provision that provided protection for himself against criminal prosecution.” Dershowitz has denied these charges vigorously, calling them “salacious and false” and, possibly more importantly, “completely irrelevant” in a Jan. 12 filing.

Despite what some called among the most exhaustive investigations in Palm Beach Police history — which dug up such evidence as an Amazon receipt for Epstein's purchase of titles including "Training With Miss Abernathy: A Workbook for Exotic Slaves and Their Owners" — there is nothing in the police record suggesting any other men were involved in Epstein's predatory behavior.



Billing Address:
Jeffrey Epstein
358 El Brillo Way
Palm Beach, Florida 33480
USA

Shipping Address:
Jeffrey Epstein
358 El Brillo Way
Palm Beach, Florida 33480
USA

rbrd57708/-3-/next/2436223 SORTExtFastTrack

Your order of September 4, 2005 (Order ID 103-1737820-4508648)

Qty.	Item	Item Price	Total
	IN THIS SHIPMENT		
1	SM 101: A Realistic Introduction Wiseman, Jay --- Paperback (** C-2 **) 0963976389	$16.47	$16.47
1	SlaveCraft: Roadmaps for Erotic Servitude--Principles, Skills and Tools Baldwin, Guy --- Paperback (** C-2 **) 1881943143	$15.95	$15.95
1	Training With Miss Abernathy: A Workbook for Erotic Slaves and Their Owners Abernathy, Christina --- Paperback (** C-2 **) 1890159077	$11.95	$11.95
	Subtotal		$44.37

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Palm Beach County Court

The criminal case provoked numerous lawsuits from women alleging they were victims of Epstein's proclivities, followed by secret settlements with more than two dozen of them. One firm bringing some of those cases employed a young lawyer named Bradley Edwards, who managed some of the cases. In 2009, a founding partner at the firm, Scott Rothstein, fled the country before ultimately returning to plead guilty of running a $1.2 billion Ponzi scheme built around recruiting investors to buy stakes in litigation settlements that turned out to be phony.

As details of the fraud emerged, Epstein sued Rothstein and Edwards in Palm Beach County Court for racketeering, alleging, among other things, that they dangled Bill Clinton's association with Epstein as a lure to investors, implying that settlements would be fast and sizable. Epstein ultimately dropped his suit in 2012, but by that time, Edwards had countersued for malicious prosecution and abuse of process.

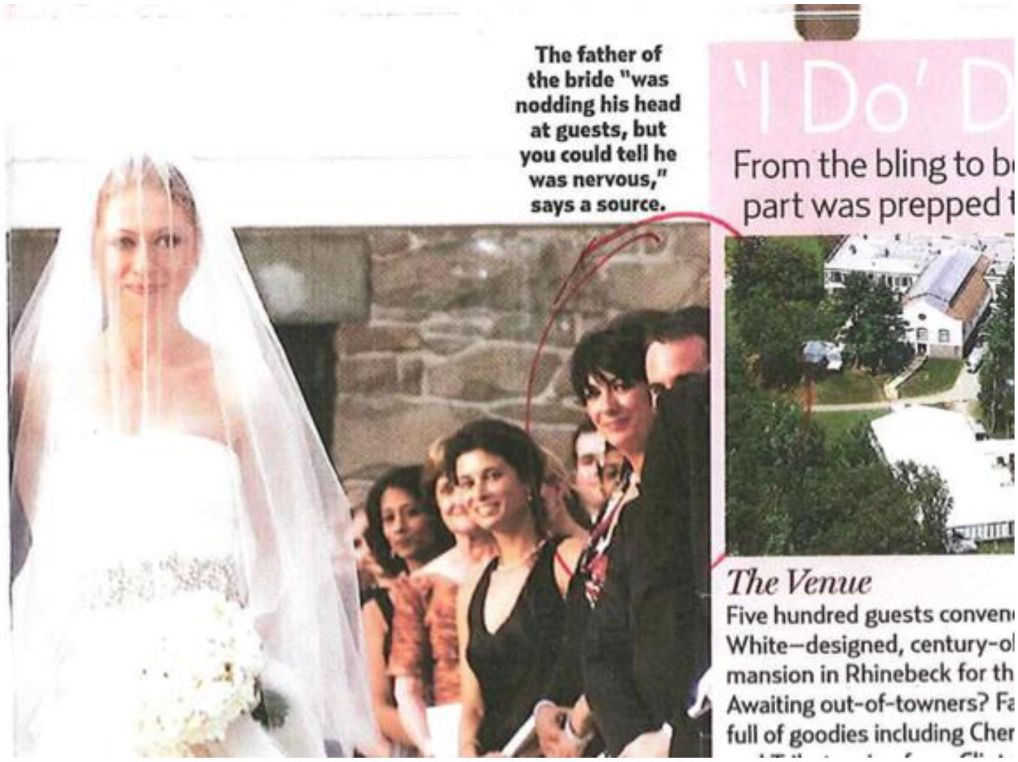
That case, along with a claim by Virginia Roberts against the federal government over the 2007 prosecution deal in district court (which she filed as a "Jane Doe" in 2008), are still pending and are the source of most of the scant information about Clinton that has appeared. Scarola, who in the past sued Chiquita over payments to violent leftist Colombian rebels and won a $1.45 billion verdict over Morgan Stanley (that was later overturned), is the lawyer bringing the suit in county court in West Palm Beach, while Paul Cassell, a former federal judge known for his critical take on mandatory-minimum sentences, mans the federal case four blocks away.

Neither Cassell nor Edwards responded to requests for comment.

It is primarily from pleadings in those cases that the press has been getting a glimpse inside the lifestyle of Epstein, and, by extension, Clinton. "Edwards had sound legal basis for believing former President Clinton had relevant and discoverable information," part of one pleading reads. Roberts, in her case, alleges that Epstein forced her "to be sexually exploited by Defendant's adult male peers, including royalty, politicians, academicians, businessmen, and/or other professional and personal acquaintances," which, Edwards elsewhere claims, are "categories Clinton and acquaintances of Clinton fall into."

Police reports entered into the record go into stomach-wrenching detail about Epstein's alleged exploits with the girls and women he recruited and paid for massages that became sexual acts, and mention other women participating as well. Epstein's longtime friend, the socialite Ghislaine Maxwell, is accused of taking part, while his personal assistant, Sarah Kellen, is described procuring young woman for him.

But neither of those women has ever said a word about Clinton being involved. Maxwell, for her part, has never been deposed. She canceled a deposition in 2010, claiming she had to return to England indefinitely due to family illness, but was soon thereafter photographed by *Us Weekly* at Chelsea Clinton's wedding in Rhinebeck, New York.


The father of the bride "was nodding his head at guests, but you could tell he was nervous," says a source.
'I Do' D
From the bling to b
part was prepped t
The Venue
Five hundred guests conven
White—designed, century-ol
mansion in Rhinebeck for th
Awaiting out-of-towners? Fa
full of goodies including Cher

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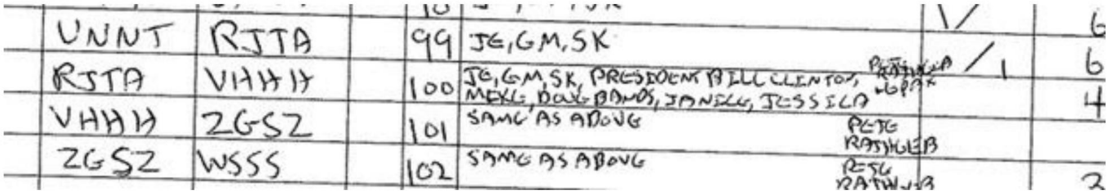
Us Weekly

For her part, Kellen, who won immunity from prosecution along with Epstein in 2007, did sit for a deposition, but repeatedly pleaded the Fifth, refusing to even say if she'd ever even met the former president.

Epstein's much-discussed flight logs show fairly conclusively that she has.

A review of the handwritten documents shows Clinton taking 13 trips in Epstein's specially outfitted Boeing 727, including a much-discussed trip to Africa with Kevin Spacey and Chris Tucker. In every single instance, the logs show, Kellen was also on the plane, as was Epstein. That may sound suspicious, except for the fact that Kellen has been described as Epstein's right hand, profoundly involved in his professional activities as well as personal ones. Indeed, Doug Band, Clinton's personal aide, was on all but one of the flights the former president took on Epstein's jet.



UNNT	RJTA	99	JE,GM,SK			6
RJTA	VHHH	100	JE,GM,SK, PRESIDENT BILL CLINTON, MEKL, DOUG BANDS, JANICE, JESSICA	PETE RATHGEB +6PAX	/ 1	6
VHHH	ZGSZ	101	SAME AS ABOVE	PETE RATHGEB		4
ZGSZ	WSSS	102	SAME AS ABOVE	PETE RATHGEB		2

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Palm Beach County Court

Among the other people who most frequently flew with Clinton are Maxwell and Adriana Ross (formerly Adriana Mucinska), another Epstein assistant and a former model. The logs also show him flying with former advisor Ira Magaziner, ex-Transportation Secretary Rodney Slater, and fashion model Naomi Campbell.

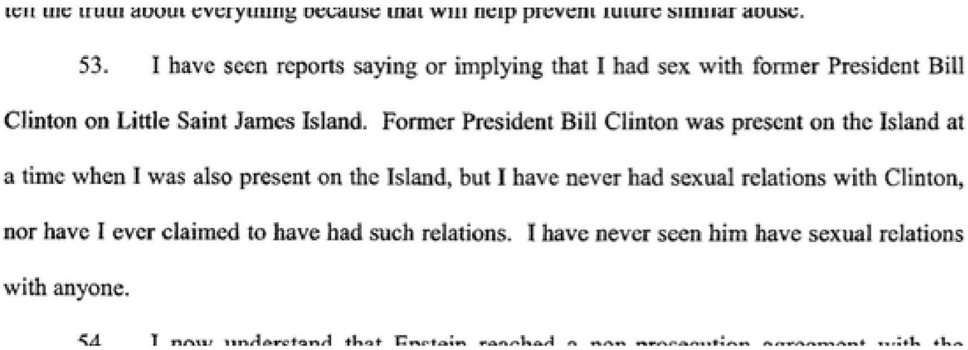
The pilots' documents also leave numerous and — understandably — intriguing questions unanswered: Clinton was on four flights with women identified as only "Janice" and "Jessica," who have not been identified; he once flew with a person identified only as "one female" and also, during part of the trip throughout Africa, a young woman named Chauntae Davies, who appears in Epstein's phone directly under the massage category and whose expertise in Swedish massage was described in *Gawker*'s story mentioning her last week. And because the entries are hand-written in a very cramped log form, it's impossible to know if important names ended up illegible or left out altogether, nor if there are other logs that have not been revealed.

But based on what's in the court files, there are no further clues about those flights, other than the testimony and public statements of Roberts, who has described the airplane as a kind of high-altitude Gomorrah. What is on the record is a deposition of Larry Visoski, one of Epstein's former pilots, who recalls having Clinton on his plane as many as 20 times. When asked, "Do you remember him being on the airplane with younger girls?" Visoski replies, simply, "No."

Clinton flew literally around the world with Epstein, traveling from New York to London, to Hong Kong, Singapore, Thailand, Morocco, Portugal, Russia, and throughout Africa. In almost every case, according to cross-referenced information on his speaking engagements, Clinton was apparently traveling for professional reasons, and, according to the logs, he never flew with his wealthy friend anywhere near the U.S. Virgin Islands.

That does little to bolster statements by Roberts, who in a 2011 conversation with her lawyers (which both *New York Post*'s *Page Six* and *Radar Online* described as an "interview") claimed Clinton traveled to Epstein's infamous retreat on Little St. James Island in 2002.

Earlier this month, it was reported that Roberts is writing a "tell-all" memoir about her experiences. In a sworn affidavit filed in court last week, she claimed to have had sex with Epstein, Dershowitz, England's Prince Andrew, and several other men on numerous occasions, and portrayed a three-year period ending in 2002 when Epstein passed her off to his friends continually. But, she added, "I have never had sexual relations with Clinton, nor have I claimed to have had such relations. I have never seen him have sexual relations with anyone."



tell the truth about everything because that will help prevent future similar abuse.

53. I have seen reports saying or implying that I had sex with former President Bill Clinton on Little Saint James Island. Former President Bill Clinton was present on the Island at a time when I was also present on the Island, but I have never had sexual relations with Clinton, nor have I ever claimed to have had such relations. I have never seen him have sexual relations with anyone.

54. I now understand that Epstein reached a non-prosecution agreement with the

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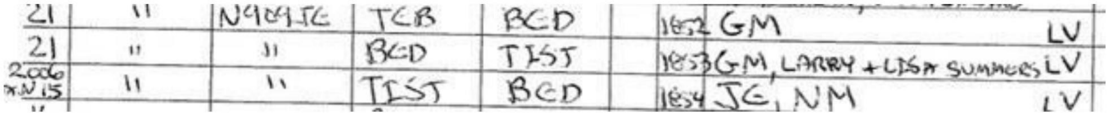
http://U.S. District Court

Intensive coverage prompted by the court filings has hinted that Clinton abruptly ceased his flying with Epstein in 2005, not terribly long before he was arrested, "perhaps because of events related to Epstein's sexual abuse of children." The implication is that Clinton may have known trouble of the worst kind was coming and decided to get out while he could. In fact, the logs show all of Clinton's flights came in 2002 and 2003, with not a single appearance aloft recorded in 2004 or 2005.

The closest potential link to Clinton in the period closer to Epstein's fall, the public record suggests, comes from one of his longtime confidants, former Treasury Secretary Larry Summers.

The flight logs indicate Summers flew on Epstein's jet as far back as 1998, but also on April 15, 2004, September 14, 2005, and December 21, 2005. The final trip came 10 days after Summers got married, and the log for the flight — from Bedford, Massachusetts, to the Virgin Islands — shows what appears to be his new bride on board, as well as Ghislaine Maxwell, but not Epstein.



21	"	N909JE	TEB	BED		1852 GM	LV
21	"	"	BED	TIST		1853 GM, LARRY + LISA SUMMERS	LV
2006 N 15	"	"	TIST	BED		1854 JE, NM	LV

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Palm Beach County Court

Epstein was a significant donor to Harvard University, of which Summers was president at the time. According to a spokesperson for Summers, on a few occasions when Epstein was flying to where Summers was also traveling, he accepted rides on the billionaire's jet.

Attorneys in the two cases have attempted to get the court to permit discovery from Clinton himself, but have been stymied by motions from Epstein's lawyers. Court records show they have also tried unsuccessfully to depose Donald Trump, former New Mexico Gov. Bill Richardson, former Sony Music head Tommy Mottola, and magician David Copperfield. Notably, a list of 73 proposed witnesses in Roberts' trial does not include Clinton.

The tale of Epstein and his sexual activities is undoubtedly a fascinating, and harrowing, one. But with the star witness in one case swearing under oath that she has no such evidence, and everyone else in a position to know keeping their mouths firmly shut, it is at this point extremely difficult to draw even a hazy, crooked, dotted line between Epstein's depredations, in the bedroom or aloft, and William Jefferson Clinton.

BuzzFeed News reporters Alex Campbell, Kyle Blaine, and Megan Apper contributed to this report.

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It’s an absurdly vast house, among the largest in Manhattan, but the dining room is windowless, creating a hermetic or stop-time sense, broken only by the household help ferrying in time-of-day-appropriate foods and beverages.

In sweatshirt, draw-string pants, palm beach slippers, and half glasses, Jeffrey Epstein sits at the head of the table. He spends most of his day in the dining room, remote from the world, in front of a lap top and beside a row of reading glasses (there are a lot of them in case, apparently, he misplaces a pair, but being quite meticulous he never does) advising, or instructing, a startling collection of the rich and powerful, slotted in on an hourly basis.

The apartness of Epstein’s dining room might seem to offer some buffer in this leveled, angry age for a super rich man who attends to even more fabulously rich men (and the occasional fabulously rich women). On the other hand, with the paparazzi often posted near by, the outside world seem dangerously close too. (Once I arrived for a visit and found several police cars blocking the street and thought the worst—they’d come for Jeffrey. But it was a security detail for a controversial head of state, also visiting him.)

His subject for the morning is “hyper wealth.” His subject is always wealth—how capital should react to the given global political, economic, and cultural moment. The otherwise baronial dining room is disturbed by an ever-present white board, on which he scribbles calculations and notes, conducting perhaps the world’s most rarified economics class, often to many of the world’s finance ministers and foremost economists.

Epstein’s apartness or parallel life reflects much of the other-worldly characteristics of the wealth revolution that began in the late 1970s and that continued through the Wall Street boom of the 80s, the tech boom of the 90s—surviving, to often bitter attack, the banking crisis—and that has now seen the emergence of the international billionaire and oligarch class.

Epstein’s way to riches was to become a canny student of such wealth as it’s grown to an unanticipated and disruptive scale. His stock in trade is not precisely the making of money, but the issues that arise when money, at a heretofore unimaginable rate, makes itself, altering many basic economic, social and personal calculations.

He recounts a dinner he had two nights before. It is, like much of what he does, a conspiracist’s fantasy. The six men at this dinner, all technology entrepreneurs, represented, together, several hundred billion dollars.

“In the past, only governments had this kind of money,” says Epstein making something of a pedagogical point, “money of a reality altering scale.

In fact, it used to be that the rich, reaching a certain point of philanthropy, merely hoped to help make the world a better place, now they want to change the world. Rockefeller and Carnegie were, as examples of social-engineering philanthropy, unique. They alone had such resources and will. Now you have legions of people who have to give away vastly larger fortunes than Rockefeller or Carnegie had at their disposal, or might even have imagined.

"Except that it's actually hard to give away this kind of wealth, without unintended consequences that can cause more problems than you're solving."

Epstein's long-time business thesis is that the rich know very little about money. They may know about their own businesses, but the great sums that are the result are an ultimate after thought and demand an entirely different sort of intellectual discipline. The Forbes 400, says Epstein, not immune to an amount of wonder, increased their wealth by $500 billion last year, meaning, in effect, that on average every Forbes-list billionaire makes more than another billion every year. And, points out the 62-year-old Epstein, they will almost all be dead in 40 years, most well before that, meaning $4.2 trillion, compounding everyday, will have to be given away. "So, to understand the future, what you have to begin to do is follow the money, not in Watergate-like terms backwards, as in who has gotten it, but forwards to where it will go and who will get it."

Epstein can find himself echoing aspects of Thomas Piketty on the inequities of the accumulation of wealth ("the divide is between people with assets, which appreciate, and people without assets, who fail to advance—that is, of course, the miracle of compounded interest"), except for the fact that Epstein, knowing the rich, understands a curious point that Piketty doesn't: "Nobody, *nobody*, wants to give it all to their children. Everybody now has the modern appreciation that one of the curses of great wealth is that it can make your kids weird and fucked up."

Epstein's position in this private allotment of a decent fraction of the U.S. Gross Domestic Product is not as philanthropist but as a higher sort of banker or guru or brain—a rich whisperer—making him, in addition to rich himself, arguably, among the most influential people you've never heard of.

Though, likely, you have heard of him, but not for his prowess with high abstraction, but for a scandal of such luridness that he is, for a great many, the poster child of the lawlessness of privilege, and for a much smaller circle, the poster child for what can happen when you become the target of a resentful world. He is *that* Epstein, according to the Daily Mail—among his most dogged and hyperbolic antagonists—“one of America’s most notorious sex offenders.”

And yet the mighty and powerful, apparently evaluating the nature of disgrace on their own terms, beat a path to his door. It’s a fantastic conclave of influence in his dining room: financiers, billionaires, heads of state, economic ministers.

He surely represents the kind of insiderism that is mostly just a figment in outsiders’ fantasies. Except for the fact that, straining credulity, Epstein is real. His is an ultimate sort of fantasy of power, wealth, and secrecy. (In 2004, when the then owners of this magazine put it up for sale, I was involved with a group trying to buy it—an effort in which Epstein volunteered to invest $20 million. New York was subsequently sold to another wealthy investor.) Were the International Jewish conspiracy to actually exist, it might be here in his dining room (while not everybody in his circle is Jewish, an obvious “think Yiddish” point of view prevails).

Without ever being asked to keep what I have heard here off the record, I’ve willingly done so, least I not be invited back. And, too, to protect him. Who would understand Jeffrey? Who could explain him?

Certainly Epstein’s past encounters with the press (and in many ways with the entire outside world) have been about as disastrous as any could be, helping to open a Pandora’s box of lifestyle vulnerabilities that sent him to prison on a prostitution charge in 2008.

And yet here he is, in his 50,000 square foot mansion, dispensing advice to world leaders and business titans.

Indeed, Epstein has been advising Bill Gates on a new way to increase the already vast clout of the Gates Foundation by adding funds from other wealthy individuals that can use the Gates resources (the Gates Foundation now employs 1,200 people), but which can be directed to separate causes and goals. And it is Gates who at the end of the summer began prodding Epstein to begin a process of public rehabilitation.

Hence, as part of an effort to get “out in front” of the unfavorable notice that might greet Gates’ public association with him, Epstein agreed to several on the record conversation with me, in the hope, on his part, that, after five years since his release from prison, he might be able to leaven his reputation. And with the hope on my part of learning more about how and if the rich are different than you and me (although we can fairly dispense with the if).

Then, just before the New Year, Epstein forwarded me a heads-up email that Alan Dershowtiz, one of Epstein's long time friends—they have a bickering brotherly relationship—and occasional legal advisors, had received from a reporter at Politico and forwarded to Epstein. The Politico reporter had been following Epstein-related court filings (there is a determined contingent of Epstein reporters) and found a new one added to an old law suit with some rather jaw-dropping claims.

Eight years after the original suit, a Florida lawyer was now seeking to add new plaintiffs to the old case. This new filing was accompanied by allegations connecting a catch-all of bold-faced names associated with Epstein more than ten years ago, including Dershowtiz and Britain's Prince Andrew, to a "sex slave" ring—indeed, that Epstein's purported sex slaves had had sex with Dershowitz and the Prince at Epstein's command.

This seemed to me to be merely a desperate, even comic-book, filing—just a lawyer trying to revive a dead case. I responded to Epstein that I doubted this would be seen as credible by anyone.

Epstein, who sometimes seems to have an out-of-body attitude to his own fate and bad press, said he thought it might be "quite a show."

Two days later, the Daily Mail, which has become the effective ground zero in the English language for anti-privilege, and moral opprobrium (the more salacious the better), and whose editor Paul Dacre has a long time feud with Prince Andrew, put the story on its front page. (Epstein also has a long relationship with the family of disgraced press baron, Robert Maxwell, another reliable target of the British press.) Flimsy and far-fetched court filings in the U.S. by settlement-hungry plaintiffs might be discounted by skeptical U.S. reporters, but, the U.K. media, constrained by onerous rules about legal proceedings in the U.K., promptly went into tabloid frenzy (even the normally sniffy Guardian, in full anti- royal and anti- billionaire fever, joined the tabloid show) and effectively exported the story back to the U.S., where Epstein's connection to Bill Clinton, and, hence as a shadow over Hillary, became the news.

"I told you," said Epstein.

There is Epstein in his inner world, trying, quite ostrich like, not to look out. Little beyond his strict realm seems palatable or even in a sense familiar to him. He's a foreigner out here. Not too long ago, I met him for lunch in the West Village, the first time in more than ten years, he said, he'd been out to lunch in a restaurant (a not particularly pleasant experience for him and we were out in 30 minutes).

Then there is the outside world pressed to the glass, appalled and titillated by the monster inside the big house—a kind of Boo Radley of the Upper East Side. I have taken friends by the Epstein mansion, and the reaction to its other-worldly size in Manhattan is almost always the same: audible disbelief (everybody makes their own particular odd noise). Press accounts, seldom supplying new information, ever recycle and repeat the mysterious (and monstrous) billionaire mythology, with brief glimpses of him stepping out of the house (the same photos endlessly republished), and the assumption of depravity inside.

In fact, the life in the house, without wife or children or conventional domestic demeanor, in some way conforms to the most scripted fantasies: a life somewhere between Daddy Warbucks and Eyes Wide Shut.

The domesticity of the house, and the background of Epstein's problems, centers around a group of young women who act as his support staff and companions. Some have worked for him for many years, marrying, having children, and continuing as part of his business and household infrastructure. One woman, on an afternoon when I was there, recently married, had just returned from an around the world honeymoon that Epstein had arranged for her. Some are his romantic interests. His present girl friend is in dental school. One former girlfriend, Eva Andersson Dubin, a Swedish model and Miss Universe finalist, became a doctor and married hedge funder Glen Dubin and together they finance the Dubin Breast Center at Mount Sinai Hospital. Most at one time will travel with him to his floating residences—the ranch in New Mexico, the vast apartment in Paris, the Island in the Caribbean, the house in Palm Beach.

This is so outside of conventional living or staffing or romantic relationships that it is hard to describe in a straightforward or straight-faced way. It sometimes seems part of Epstein's implicit challenge: not just look at me, but do you even believe what you see? Or it seems he is just oblivious to what others are thinking. A willful and perhaps fatal tone deafness.

But Hefnerian prurience can also be quite businesslike: poised young women in a mansion on the Upper East Side with various office responsibilities—in some sense not that different from any of the art galleries in the surrounding neighborhood.

Epstein's young women mingle freely with his powerful guests, not so much as hostess or, in tabloid language, harem-like (or as "sex slaves"), but often as attentive students (that, of course, might be regarded as having its own fetish-like attraction).

Once, Epstein invited me to sit in on a day of presentations to him in his dining room by various “quants.” Quant theory involves making investments based solely on mathematical and statistical models. This method can often have uncanny predictive powers. But the problem is it doesn’t scale very well—the market, having discerned a pattern of successful investing, quickly copies and discounts the advantage. Epstein’s effort was to identify a dozen or so promising algorithms (each quant is effectively hawking his secret sauce algorithm) and invest up to $5 million with each. I knew paltry little about this and so rather found myself identifying with the young women to whom Epstein was explaining the basic math and mechanics—out of my league, but grateful for the lesson.

The Epstein house/office is, by careful design, exclusive and club like, part hang out, part secret society. Along with the difficulty in explaining why, even after his jail term, the rich and powerful have yet beaten a path to his door, it’s also notable in the fixed hierarchy of who comes to whose turf, that everybody, when they went to see Epstein, comes to him.

A week in late September, U.N. week as it happened, began, on Sunday, at Epstein’s house with a colloquial for billionaires—Gates, TK, TK, TK.

Epstein, preternaturally responsive to both the price of oil and to the politics of the middle of East, entertained that evening a delegation from Qatar, including **Sheikh Hamad**, the foreign minister. Hamad, indeed, lives across the street in a similarly furnished house—he and Epstein have the same decorator. Epstein, in his relaxed and amused demeanor, kept prodding: “Why are you financing the bad guys? What do you get out of that?”

The Qatarians, in some mild diplomatic discomfort, seemed most worried that their bid for the World Cup might be compromised by bribery allegations.

At 9:00 next morning, Epstein is joined for breakfast in the dining room by Reid Weingarten, who’s represented among other fat cats in trouble, Worldcom’s Bernie Ebbers and Goldman Sach’s Lloyd Blankfein. Weingarten, horse, with a cold, and dejected, is just back from a failed defense of former Connecticut Governor John Rowland. (Epstein: “You actually believe he was getting fucked?” Weingarten: “From minute one. I’m not a virgin. But his was the worst I’ve ever seen. It was like an assassination.)

After a short discussion of the Qartarian’s visit—Epstein is serving the chocolate, made from pistachios grown on the Shakes farm—and speculation about who actually controls ISIS, I am asked to leave the room.

Twenty minutes later, after what ever business has been transacted or particular confidences, shared I am asked back in.

"Why?" I asked Weingarten, when Epstein briefly steps out of the room, "do some many people keep coming back here, everything considered."

"Why we camp out here? I find that question as mysterious as you do," says Weingarten.

Shortly after Weingarten leaves, Epstein tells me that Eric Holder will resign by the end of the week—which he does.

Epstein summons in the next person cooling his heels in the ante-room. It's a young man named Brook Pierce, a former child actor, and dotcom high flyer—a principle in a gaming company called DEN, a notorious dotcom burnout, with its own sex scandal—who is now a leading investor in Bitcoin. He describe himself as the "the most active investor in the field."

And, indeed, is the first clear explanation I actually get about Bitcoin. It is so good that Epstein stops him and checks to see if his next appointment is here. And seconds later, Larry Summers, the former treasury secretary and President of Harvard, enters the dining room. Summers, off Diet Coke, digs deep into the Shakes chocolates, focuses in on the Bitcoin investor.

"Okay," he says, after listening for a bit, "I have opportunities here. But an additional feature of my decision problem roughly speaking is that the worst that could happen to you is that you could lose all the money you put into it. Whereas, I could go—I mean I don't look that great now—but I could go from being seen as a figure of some probity and some intelligence to being a figure of much less intelligence and much less probity…"

"Well," says Pierce in what in some dramatic understatement, "you are going to have some low quality characters playing the space…"

That evening, there is a small cocktail party, which includes the former Prime Minister of Australian, Kevin Rudd, and Thorbjørn Jaglandthe head of the Noble Peace Prize Committee, who offers an affable, but general scathing, critique of U.S. diplomacy (and a brief defense of Obama's Peace Prize award) and to whom Epstein offers a ride back to Europe on his jet.

The next morning, it's Ehud Barack, the former Israeli Prime Minister and Israel, for breakfast. Barack is, over his omelet, able to defend both Obama and Putin. Then Kathy Ruemmler, who has just left her job as White House Counsel joins. She is already in the mix as a possible next attorney general, but, in fact, will withdraw from consideration in part to work with Epstein.

Larry Summers wife, Elisa New, drops by. She teaches American poetry at Harvard and is putting together a proposal for a series on poetry that WGBH in Boston may produce and Epstein is advising on where she might go for added support (he also makes mince meat of her budget).

MORE…TK

Perhaps it's just the ultimate feminist nightmare: Men (and a few opportunistic women) continue to come to Epstein's because, no matter their public bows to modern manners, they simply don't care that he offends every aspect of feminist sensibility

Or, it's a guilty pleasure. People who know Jeffrey exchange "Jeffrey" stories. "That's Jeffrey," says Mort Zuckerman, the real estate billionaire and publisher of the Daily News (ever vitriolic in its coverage of Epstein), with a twinkle in his eye and obvious enjoyment, to tales of Epstein escapades. It is an outréness that Epstein seems delighted to cultivate. In Epstein's Paris apartment, 10,000 square feet on the Avenue Foch, a neighborhood otherwise occupied by foreign potentates, there is a stuffed baby elephant in his living room—that is, the *elephant in the room*. (At the same time, Epstein is a major supporter of cancer research and the elephant, he says, is also a reminder that elephants have 23 copies of tumor suppressor genes and humans have only 1.) The single book on his bedside table is Lolita (he is, beyond the joke, a great Nobokov fan).

Or, in a more sophisticated view, it's a two tier understanding of the world. There is a media version of the world, which most of us live in and largely accept, and are certainly influenced by. And then there are those people who live in the media itself and therefore know that it's mostly bunk. If the media says it, as likely some version of the opposite is true. I might guess too that for many of his visitors there's an order of identification: there but for the grace of God. Any hyper-prominent person might, at any time, run afoul of prosecutors, the political moment, the media, or the Internet hoi polloi.

Epstein is the Dreyfus of the rich.

And then there is the glue of wealth. Once, at lunch in the Epstein dinning room with Bill Richardson, the former Governor of New Mexico, and past Presidential aspirant, when Epstein left the room for a few minutes, I asked the obvious question, the one everybody asks each other, "How did you meet Jeffrey?" Richardson seemed surprised: "Jeffrey," he said, as though stating what should have been perfectly obvious, "is the biggest landowner in New Mexico."

And then there is Epstein's yet more structural explanation as to why after prison and with continuing tabloid infamy he can maintain his valued place. It comes back, not unexpectedly, to the nature or the needs of money:

"At a certain level of finance, almost everyone is allied with an institutional interest. You are part of government, or you want to be in government, or you are connected to a bank or other portfolio, or you have key relationships with certain corporations or industries. Because of my situation, I have none of that. I have no institutional bona fides which makes me in some sense one of the few independent sources of information and actual honest brokers. That's the usefulness of disgrace."

And then there is too, that he is right. Since I began working on this piece in September, Epstein predictions about the price of oil, yen, ruble, and euro have all born out. (If I had invested $100,000 the way Epstein said I should in early September, by the end of January I would have made $2.3 million. Alas, I did not.)

And something else, which perhaps also surely accounts for Epstein's continuing relationships with the rich and powerful:

Most everyone who is now of a certain age and certain ambition and certain status grew up in, and found they were temperamentally suited to, the new age of wealth that started in the late 1970s. A meritocracy on steroids, or, as Vanity Fair would baldly and ingratiatingly dub it, the new establishment, an increasingly parallel world, a self-invented one, at further and further remove from the ordinary one. In some sense, Epstein is just one version, picaresque, as well as louche, of this shared story.

He often tells, with some obvious marvel, his middle class to riches tale. He was born in 1953 in Coney Island. His father worked for the city's Parks Department. His mother was a housewife. He has a younger brother, Mark.

Epstein was distinguished by little other than his math talents. The captain of the math team at Lafayette High school in Bensonhurst, he goes on to Cooper Union where the tuition is free. He drops out after two years and begins taking classes at the NYU's Courant Institute of Mathematics. Then, without a college degree, hence by a slight of hand, gets a job teaching math and physics at Dalton in 1974. (A few years ago, during a chance encounter with a former Dalton math department chairman, Margo Gumport, I asked her about Epstein. She said he was the most brilliant math teacher at Dalton in her 50-year career and that she had often wondered what had become of him.)

It’s his first exposure to the wealthy. They have, he concludes, just as many problems as the people in Coney Island, just different ones, almost invariably involving divorce and money. “I found it interesting as a science experiment,” he recalled not long ago as we chatted about his life. “It did not really involve me. I could just stand back and watch.”

Dalton fathers were attracted to him. Punch Sulzberger, the publisher of the New York Times, and a Dalton father at the time, tried to recruit Epstein to come to the Times. (Epstein recounts a story of riding with Sulzberger in his wood paneled station wagon to the his country estate and Sulzberger talking to the chauffer on a phone from the backseat to the front.)

In 1976, another Dalton father, asking “wouldn’t you rather be rich than be a teacher?” introduced him to Bear Stern’s chief Ace Greenberg, a conversation Epstein recounts as this:

Greenberg: “Everyone tells me you’re super smart in math and you’re Jewish and you’re hungry…so why don’t you start working here tomorrow?”

Epstein: “What?”

Greenberg: “If your supposed to be so fucking smart, don’t you understand English?”

Epstein: “Ok. Count me in.”

Hence, Epstein, like many in the late 70s, arrived on Wall Street.

As will happen to a generation of others, by the fortuitous luck of being on Wall Street at that point in time, Epstein is transformed by a new, much faster, form of upward mobility. With a facility for mathematics as well as for getting along with rich men, he transforms at an even faster rate than others being quickly transformed.

He moves into a new building at 66th Street and Second Avenue—still in the shadow of the Maxwell Plum era when the 60s on Second was the glamour address—a building full of “actresses, models, and euro trash.” (It would shortly become the Studio 54 era, where Epstein, who doesn’t drink or take drugs, was a regular).

If on one side of Wall Street there were the salesmen (the Wolf of Wall Street model), on the other side there was a new sort of finance type able to embrace a level of acute abstraction.

“In the past,” says Epstein, “investing was all about reputations and relationships. You invested in a company on the basis of who was running it. Did they have integrity? Were they married? Good family men? It was a 50’s mentality. But in the mid 70s options started to be traded. In essence, the first formal derivatives. The movement of this instrument is not directly attached to the stock price. The world of investing began turning from relationships to math. In a sense I didn't really make money as much as I did create it. This was intellectual activity of a fairly high order."

Intellectual activity aside, he meets Helen Gurley Brown and she makes him Cosmopolitan Magazine's Bachelor of the Month in 1980.

"What," I ask, "was your social life like?"

"Well, I was a playboy."

"That's all? Not looking to get married?"

"No. Never. I never wanted to get married. I wanted sex. I liked women. I wanted freedom. I was attracted to the rich because of their freedom. But I wanted also to avoid their burdens. And I didn't want to hide. I didn't want to be a hypocrite. I wanted to be free. I was not remotely ambivalent about what I wanted: to be free. That was the reason to make money."

His rise at Bear Sterns was a steep one. And he soon became the protégée of Jimmy Cayne (also hired by Ace Greenberg on a whim—he met him in a bridge game—who would go on to run Bear and to lose his fortune in Bear's 2006 collapse). Epstein's leave taking or ouster from Bear is the result of politics, envy, overreaching, or a securities violation, or…unclear. But, no matter, he leaves in 1982 with billionaire clients, including Marvin Davis, a real estate developer who owns Twentieth Century Fox, and Herb Seigel, a major media investor in the 1980s. Epstein is dating Morgan Fairchild, a television star in the 1980s rich-family soap operas, Dallas and Falcon Crest.

Now begins the Concorde phase of his life—and the Concorde phase of the 1980s. If the 80s are happening pell mell in New York, they're happening at double time and catch up speed in London. Epstein is 30 years old and living, in Lifestyle of the Rich and Famous fashion, at English shooting parties at country estates with Saturday night black tie dinners, where he's meeting the richest families in Europe.

"I don't take it seriously," Epstein recounts. "I'm not caught up in it. I'm not trying to make a billion dollars. There is no ultimate goal. Or its just to meet smart people, interesting people. But no long-range plans. Often no short-term plans either. I would head to Kennedy and, on the theory that most important events are serendipitous, I wouldn't decided where I was going until I got there."

At the same time, he is developing a perception, or, at least a market differentiation: the hyper wealthy had different problems than the very wealthy. Dealing with a billion dollars was different from dealing with $100 million:

"If you had a billion dollars I would think the last thing you should be worried about was money, in truth money was what you most worried about. How to make more of it, how to give away more of it, how to protect you children from it, how to hide it from your wife or husband, how to minimize your taxes on it. The traditional wealth service structure, an accountant, and investment advisor, a personal lawyer, and an idiot brother-in-law, became hopelessly outdated as amounts exponentially increased.

"You can't spend a billion dollars, you can just relocate it to a different investment class. And you can't give away a billion dollars without a vast staff, in effect going into the business of giving away money, yet another business you are likely to know little about."

At just about this point in the narrative, the questions or the incredulity begins in social circles and eventually in the media. He begins to acquire the major symbols of riches but does this without position, public holdings, or obvious paper trails. In essence, the formulation is, how can a person have enough money to merit increasing attention, but no clear way of having gotten it. Epstein gets stuck in that tautology. He may be rich, but he is without institutional protection or bona fides. He is a questionable substrata of wealth. He's a freelancer.

That's the rub: he doesn't work for anyone. Without institutional credentials he's…well, nobody knows what.

For a period, one part of his activities he says is recovering monies for countries looted by exiled dictators or military strongmen. If early in his career he might seem like a sort of George Peppard (there's a physical resemblance) in Breakfast at Tiffany's, a charming hustler, later he's George Peppard in Banacek, a smart and astute operator.

Then, in his telling, he's representing a series of vastly wealthy people and families. He's not just doing their bidding or their investing, he's helping them to imagine the ambitions of their wealth. They've satisfied their business dreams. Now there are the separate challenges and possibilities of their actual wealth.

In essence, as he becomes more public the response to this, as a function of envy and the media's need for definition, is "bullshit." True, there is no clear alternate narrative. No one is accusing him of anything, accept, sometimes, guilt by association. (In addition to Robert Maxwell, who will be accused of fraud, there's Steven Hoffenberg, briefly a New York high flyer, who went to jail for a Ponzi scheme, for whom Epstein acted as a consultant.) But the characterization persist: if it's not clear, it must be murky. Sure, Goldman Sachs partners and tech fortunes, but what to make of a Coney Island, Zelig-like no-namer?

In 1994, just at the moment when Prince Charles is on television acknowledging his love for Camilla Parker Bowles, Jeffrey Epstein is sitting with his arm around Princess Diana at a dinner at the Serpentine Galley in London (Diana is wearing her "revenge" dress that evening). Graydon Carter, into his second years as editor of Vanity Fair, is also at the dinner. Epstein's rise and Carter's rise are not, with a little critical interpretation, that different. Both are a function of the age of new money, both are helped by strategic relationships with the exceptionally wealthy (i.e. they are social climbers), both men have made themselves up. To say that Epstein, in the company of the Princess, sticks in Carter's craw would be an understatement. Epstein becomes one of the "what do you know about him" figures in Carter's gossip trail—a story waiting to happen. A variety of the gossip that begins to circulate about Epstein—for instance, that he secretly films his guests—is seeded by Carter, who once advised me not to go to Epstein's house or accept a ride in his car least I risk being blackmail. ("For what?" I asked Carter. "For you have no idea," said Carter.)

Epstein is playing a cat and mouse game with his own growing wealth and influence. He is private and secretive, but grandly so. He joins the board of Rockefeller University. He's suddenly on the Trilateral commission, that cabal of business people who fancy themselves, and who are fancied by conspiracy buffs, as running the world. He buys from his client Limited Founder Les Wexner the larges private house in Manhattan. (Rumors will continue for many years, that Wexner owns the house and Epstein is just squatting in it—an 18-year squat.) He buys an airplane. He buys another. He expands his holdings in New Mexico. He begins a Zanadu refurbishment of his Caribbean Island.

He befriends Bill Clinton in his new after-office life.

And that's quite the fatal pairing.

The post-Monica Clinton, now having pardoned the on-the-lam financier Marc Rich, is suddenly being ferried around in the jet of…*who* exactly?

The New York Post is the first to take formal media note of the Clinton-Epstein connection, hinting at a sex and money bromance. The instinctively private Epstein is not just increasingly exposed, but clearly curious about the nature of exposure.

I met Epstein around this time. Epstein had become a more and more active backer of advanced scientific research—ultimately he will donate $30 million to Harvard for a theoretical physics research center—and in 2002 he was taking a small group of scientists out to the TED conference in Monterey. The TED organizers invited various other TED participants, including me, to join the flight. A small group assembled at the private plane terminal, most of us unfamiliar with our benefactor, and as we headed in the direction of the discrete private plans we were gently pointed to our ride: Epstein's 727.

It is some thoroughly updated drawing room set-up, all of us nervously ensconced in this luxury plane, waiting for our unknown host to arrive—and soon he does, tanned, relaxed, with wide open smile, accompanied by three young women.

It would be unlikely, outside of a men's magazine fantasy of the luxe life, that you could locate this in reality. Epstein's attentions, taking time with each of his passengers, seemed impossible to account for. The quiet of the plane, engineered into acoustic perfection, seemed spooky. Epstein's three companions were witty, poised, helpful as well as powerfully alluring—as though stewardesses of bygone times.

(One more thing about this trip: Google founders, Larry Page and Sergey Brin, with their company still in its infancy, came out to see the plane and, with a few other Googlers, literally ran whopping from one end of the plan to the other. Then they described for Epstein, in what I can not now remember as a put on or entrepreneurial brainstorm, a brand extension in which they would market a line of Google bras with the Os as convenient cups. In fact, the name Google, they said, was invented out of the belief that men would focus on a word with two Os in it.)

Not long after this trip, Epstein's assistant called to invite me for tea at his house in New York, where Epstein, with what seemed to me little understanding of the subject, began to ask me about media—the upside, downside, and nature of media coverage. New York magazine was then soliciting him for a profile, as was Vanity Fair, who had assigned the British tabloid reporter, Vicki Ward, to the job.

Both profiles, New York's by Landon Thomas, pivot on the Clinton connection and detail the same quandary, how a man without clear institutional bona fides nevertheless achieves wealth and influence. Ward—who would more recently assert in the Daily Beast, that she was barred by Vanity Fair from writing about under-age sex evidence (a fact that could be read the other way: Vanity Fair, even looking to take down Epstein, did not find the evidence credible)—follows a rabbit hole of questionable contacts who might or might not have been the source or sources for

Epstein's wealth, but gets no closer to an answer, beyond confirming her own sense of dubiousness.

Epstein, sensing that he might be exposing himself, tried to stop the process (Ward, well known for offering an operatic view about her reporting exploits, says he threatened her), called Carter and said he was having second thoughts about being a public figure.

"Then you should live in a two bedroom apartment in Queens," responded Carter.

And then the troubles began.

Epstein, in man-who-can-have-everything fashion, has, for many years, ordered up a daily massage following his workout sessions.

"Often these were massage massages," says Epstein matter of factly, "but sometimes these were happy ending massages, especially in Palm Beach, where there are many massage parlors—'Jack Shacks,' they're called—that do outcalls. There was no sex. An often there was no happy ending. Often I would be on the phone for the entire massage. There were however a lot of massages and a lot of girls, with one girl recommending others."

It is after Epstein's round of publicity and widely touted association with Clinton, that the mother of one of the massage parlor girls who went to Epstein's house (most of the girls return to Epstein's house many times) calls the police. The police interview the girl, Saige Gonzales, who then supplies names of other girls. Some of whom are found to be younger than 18.

In the end, the police track down 18 girls—nine who are under 18; the others in their 20s and 30s; one woman is in her 60s—a number of whom give statements describing scenarios not terribly different from Epstein's description above, except each is laid out in clinical, lurid, and near-identical detail. A cold and forceful Epstein demands that unwitting juveniles (though they have come here for this very purpose) perform repulsive (or at least repulsively described) acts on him. (Although the nature of the allegations will dramatically grow, nobody at this point alleges that he did anything to them.)

Epstein, tipped to the investigation, vastly raises the stakes, calling Dershowitz, who flies into Palm Beach to put the local authorities in their place—alienating Palm Beach officialdom—and, doubling down on the profile of the case. Dershowitz brings in Roy Black the famous criminal attorney who defended William Kennedy Smith in his rape trial in Palm Beach.

Here's the narrative: the shadowy rich man, friend of the louche and disgraced President, at all times surrounded by a retinue of gorgeous retainers doing his bidding, is now found to have gathered a network of wrong-side-of-the-tracks Palm Beach girls to provide him with weird sexual services. (It somehow reads weirder that he doesn't have sex with them.) To boot, his former girl friend, Ghislaine Maxwell—the daughter of the disgraced Robert Maxwell—encouraged at least one of the girls to come to Epstein's home (and forever more has become a fixture of further weird possibilities in this tale).

Palm Beach Police Chief Michael Reiter is reported to say: "This is bigger than Rush Limbaugh," who, in a storm of publicity, has just been arrested in Palm Beach for possession of controlled drugs.

On one side are some of the nation's most powerful defense attorneys (who, increasingly, seem more stumblebum than effective), on the other side, a round-up of hapless girls, with sensational tales of perversion and infamy (in the telling they are not so much sex workers, as Dickensian victims), relatively speaking giving the Palm Beach authorities the choice between utter capitulation to the powerful or standing on the side of the exploited and powerless.

Still, with a critical eye, it also quite appears to be a straightforward tale of prostitution (however more or less kinky). And even though some of the girls are minors, age is not a distinguishing factor in a prostitution charge in Florida, nor in most places (in New York, for instance, at this time soliciting sex with anyone over the age of 14 is a class D misdemeanor calling for a $100 fine).

In fact, Saige Gonzales told the police that she lied about being 18 because otherwise she knew she would not have been admitted to the house.

The local sex crimes prosecutor, Lana Belhalevic, interviews the girls and determines that the offense is solely related to prostitution—that there are no innocent victims.

Dershowitz rejects a series of lower-level plea deals and Palm Beach District Attorney Barry Krischer takes the unusual step of empanelling a grand jury, which returns with a recommendation of a single count of soliciting a prostitute—a charge without jail time. (And Epstein can apply to have his record expunged after a year.)

At which point, Reiter, the police chief, at odds with the District Attorney's office, recruits the involvement of the FBI. This is of course the Bush-era FBI and Epstein presents quite the Clinton-connected scandal. Still, solicitation, even of a minor, is not a federal crime. The FBI hits on the novel interpretation that if Internet solicitation can be considered interstate commerce, so can telephone solicitation, permitting them to begin a deep dive investigation into Epstein's friends, many of whom receive subpoenas and are threatened with prosecution.

It's all quite in the eye of the beholder: On the one end, Epstein is paying for sex acts (Epstein paid $200 for a massage with or without happy ending), on the other, he is abusing teenage girls. It's a catch-22: How can a girl not old enough to vote be a prostitute? And yet, many girls not old enough to vote *are* prostitutes.

Compounding Epstein's predicament, the world outside of his carefully constructed and controlled environment is someplace that he seems not just ill-equipped to handle but in which he seems to be blindly grouping about (i.e. he's totally tone deaf). I visited him once during this time and found him weighing the conflicting advice of some of the most vaunted and egomaniacal lawyers (along with Dershowitz and Black, celebrity criminal attorney, Gerald Lefcourt, and Clinton prosecutor, Ken Starr) of the day—anyone with new advice, Epstein seemed to hire—as well as a catchall of the leading crisis managers, who he seemed to retain at will, all wrangling for fees and primacy.

Certainly, the upshot of his dealings with the Justice Department seem to involve a through-the-looking-glass logic. The government threatens to prosecute him (with the possibility of a 10-year sentence) and various friends, associates, and lovers, or offers an ass-backwards sort of deal in which Epstein's lawyers have to go to the Palm Beach authorities and get them to agree to charge him with an offense that will send him to jail and get him a sex offender status. Except that a solicitation charge won't produce that result. Therefore he has to agree also to a procurement or pimping charge (even though he has paid money, not received it—the sine qua non of pimping). What's more, he has to agree to pay the legal fees of any of the girls who want to sue him—and, not to defend himself from their suits—forcing him to settle with each of the girls for what are reportedly high 6-figure sums or more.

He's sentence to jail in 2008 for 18 months and serves 13 (while Epstein is now frequently accused of somehow managing to cut short his sentence, almost all Florida prisoners serve only 70% of their officially sentenced time).

This hardly ends the legal catch all. Epstein's butler, Alfredo Rodriguez, steals and tries to sell an alleged journal or calendar with

Epstein's activities—but he tries to sell it to an undercover agent. Rodriguez is sentenced to 18 months in jail on a charge of theft and of withholding evidence (and a further two and half years on a related gun charge). Scott Rothstein, a lawyer whose firm represented additional girls in their suits against Epstein, also goes to jail for recruiting investors to pay for these suits on the fraudulent basis that settlements had already been reached. It's the largest fraud in Florida history and Rothstein receives a 50-year sentence.

Then, Brad Edwards, Rothstein's former partner, sues the federal government in 2008 for abridging the rights of two of the original complainants under the Crime Victim Rights Act (giving victims the right to be consulted about the disposition of their cases) regarding the Justice Departments agreement not to prosecute in favor of the state action. In 2014, Edwards tries to ad Virginia Roberts, another of the original complainants, who has previously settled with Epstein, to the long-running suit. Roberts who was paid a settlement under the original terms of Epstein's agreement—that he would pay attorney's fees and not oppose any law suits against him—is now trying to overturn the agreement under which she was paid, and, with Edwards, further suing Epstein for $50,000,000.

As the most vocal of the accusers, Roberts, with the Daily Mail being her prime outlet, emerges now with what is billed as a memoir of her "sex slavery" with Epstein, written ten years after the fact. She names a number of people as being at Epstein's Island home, including Clinton and Al Gore and his wife, who Epstein's lawyers insists were never there—proof available through secret service records.

The FBI is now arguing that Roberts should not be party to the suit against the government because she refused to cooperate with the government in its investigation in 2007, hence has no standing as a victim. (At the same time, the FBI included her on the list of 40 victims with whom it mandated Epstein reach a settlement.)

It is hard to find a more hyperbolic intersection of media and lawyers then in Epstein's case.

Edwards, over the six years of his law suit, tries to depose Clinton, Donald Trump, and Dershowitz—almost all of his targets coming directly from the original Vanity Fair and New York Magazine articles about Epstein.

In addition to Prince Andrew as a British hot button, first connected to Epstein through Roberts' interview with the Daily Mail in 2010, Clinton takes on a new role as Hillary spoiler through his connection, real or imagined, to Epstein and sex slaves.

Almost everybody identified in any story about Epstein is approached by other media seeking to write about Epstein, often with financial incentives.

No new details emerge. Every aspect of the current story is based on court filings describing events that may or may not have taken place prior to 2007.

A recent Reuters story identified a charity that Epstein has not given money to in 15 years that said if he does give again, they would give it back.

The world cleanly divides, with Epstein (and friends) behind secure walls and the Mail and social media and upholders of new norms, ever more incredulous and apoplectic that Epstein not only walks free but prospers too. Although he has spent more than a year in jail and paid out what may be as much as $20 million, he yet seems somehow to have gotten away with it—that worst sin of all. He is the unrepentant catch all of up-to-the-minute badness: the financier whose wealth is a product of Wall Street math rather than work; a rich middle-age white man who not only parades his wealth and entitlement, but has a Peter Pan complex to boot; an insistent Playboy in a correct and prudish world; someone who somehow didn't get the memo about vast changes in mores and culture.

When I suggested recently that one obvious way to blunt the animus is to get married, he said he would rather go back to jail.

He is Calvin Harris's song, It Was Acceptable in the 80s, come to life.

This is all, inevitably, a Gatsby-like story. But Gatsby in New York Post and Daily Mail parlance would likely be a freaky financier too.

And it's a story about the limitation of journalism, in which the most compelling parts of the story—it would take a long running cable show to do justice to the meaning of Epstein's ambitions and impulses—need to be sacrificed for not just moral certainty but for a rather preposterous fantasy of moral certainty.

Anyway, I hope I get invited back to Jeffrey's house.

It’s an absurdly vast house, among the largest in Manhattan, but the dining room is windowless, creating a hermetic or stop-time sense, broken only by the household help ferrying in time-of-day-appropriate foods and beverages.

In sweatshirt, draw-string pants, palm beach slippers, and half glasses, Jeffrey Epstein sits at the head of the table. He spends most of his day in the dining room, remote from the world, in front of a lap top and beside a row of reading glasses (there are a lot of them in case, apparently, he misplaces a pair, but being quite meticulous he never does) advising, or instructing, a startling collection of the rich and powerful, slotted in on an hourly basis.

The apartness of Epstein’s dining room might seem to offer some buffer in this leveled, angry age for a super rich man who attends to even more fabulously rich men (and the occasional fabulously rich women). On the other hand, with the paparazzi often posted near by, the outside world seem dangerously close too. (Once I arrived for a visit and found several police cars blocking the street and thought the worst—they’d come for Jeffrey. But it was a security detail for a controversial head of state, also visiting him.)

His subject for the morning is “hyper wealth.” His subject is always wealth—how capital should react to the given global political, economic, and cultural moment. The otherwise baronial dining room is disturbed by an ever-present white board, on which he scribbles calculations and notes, conducting perhaps the world’s most rarified economics class, often to many of the world’s finance ministers and foremost economists.

Epstein’s apartness or parallel life reflects much of the other-worldly characteristics of the wealth revolution that began in the late 1970s and that continued through the Wall Street boom of the 80s, the tech boom of the 90s—surviving, to often bitter attack, the banking crisis—and that has now seen the emergence of the international billionaire and oligarch class.

Epstein’s way to riches was to become a canny student of such wealth as it’s grown to an unanticipated and disruptive scale. His stock in trade is not precisely the making of money, but the issues that arise when money, at a heretofore unimaginable rate, makes itself, altering many basic economic, social and personal calculations.

He recounts a dinner he had two nights before. It is, like much of what he does, a conspiracist’s fantasy. The six men at this dinner, all technology entrepreneurs, represented, together, several hundred billion dollars.

“In the past, only governments had this kind of money,” says Epstein making something of a pedagogical point, “money of a reality altering scale. In fact, it used to be that the rich, reaching a certain point of philanthropy, merely hoped to help make the world a better place, now they want to change the world. Rockefeller and Carnegie were, as examples of social-engineering philanthropy, unique. They alone had such resources and will. Now you have legions of people who have to give away vastly larger fortunes than Rockefeller or Carnegie had at their disposal, or might even have imagined.

“Except that it’s actually hard to give away this kind of wealth, without unintended consequences that can cause more problems than you’re solving.”

Epstein’s long-time business thesis is that the rich know very little about money. They may know about their own businesses, but the great sums that are the result are an ultimate after thought and demand an entirely different sort of intellectual discipline. The Forbes 400, says Epstein, not immune to an amount of wonder, increased their wealth by $500 billion last year, meaning, in effect, that on average every Forbes-list billionaire makes more than another billion every year. And, points out the 62-year-old Epstein, they will almost all be dead in 40 years, most well before that, meaning $4.2 trillion, compounding everyday, will have to be given away. “So, to understand the future, what you have to begin to do is follow the money, not in Watergate-like terms backwards, as in who has gotten it, but forwards to where it will go and who will get it.”

Epstein can find himself echoing aspects of Thomas Piketty on the inequities of the accumulation of wealth (“the divide is between people with assets, which appreciate, and people without assets, who fail to advance—that is, of course, the miracle of compounded interest”), except for the fact that Epstein, knowing the rich, understands a curious point that Piketty doesn’t: “Nobody, *nobody*, wants to give it all to their children. Everybody now has the modern appreciation that one of the curses of great wealth is that it can make your kids weird and fucked up.”

Epstein’s position in this private allotment of a decent fraction of the U.S. Gross Domestic Product is not as philanthropist but as a higher sort of banker or guru or brain—a rich whisperer—making him, in addition to rich himself, arguably, among the most influential people you’ve never heard of.

Though, likely, you have heard of him, but not for his prowess with high abstraction, but for a scandal of such luridness that he is, for a great many, the poster child of the lawlessness of privilege, and for a much smaller circle, the poster child for what can happen when you become the target of a resentful world. He is *that* Epstein, according to the Daily Mail—among his most dogged and hyperbolic antagonists—“one of America’s most notorious sex offenders.”

And yet the mighty and powerful, apparently evaluating the nature of disgrace on their own terms, beat a path to his door. It's a fantastic conclave of influence in his dining room: financiers, billionaires, heads of state, economic ministers.

He surely represents the kind of insiderism that is mostly just a figment in outsiders' fantasies. Except for the fact that, straining credulity, Epstein is real. His is an ultimate sort of fantasy of power, wealth, and secrecy. (In 2004, when the then owners of this magazine put it up for sale, I was involved with a group trying to buy it—an effort in which Epstein volunteered to invest $20 million. New York was subsequently sold to another wealthy investor.) Were the International Jewish conspiracy to actually exist, it might be here in his dining room (while not everybody in his circle is Jewish, an obvious "think Yiddish" point of view prevails).

Without ever being asked to keep what I have heard here off the record, I've willingly done so, least I not be invited back. And, too, to protect him. Who would understand Jeffrey? Who could explain him?

Certainly Epstein's past encounters with the press (and in many ways with the entire outside world) have been about as disastrous as any could be, helping to open a Pandora's box of lifestyle vulnerabilities that sent him to prison on a prostitution charge in 2008.

And yet here he is, in his 50,000 square foot mansion, dispensing advice to world leaders and business titans.

Indeed, Epstein has been advising Bill Gates on a new way to increase the already vast clout of the Gates Foundation by adding funds from other wealthy individuals that can use the Gates resources (the Gates Foundation now employs 1,200 people), but which can be directed to separate causes and goals. And it is Gates who at the end of the summer began prodding Epstein to begin a process of public rehabilitation.

Hence, as part of an effort to get "out in front" of the unfavorable notice that might greet Gates' public association with him, Epstein agreed to several on the record conversation with me, in the hope, on his part, that, after five years since his release from prison, he might be able to leaven his reputation. And with the hope on my part of learning more about how and if the rich are different than you and me (although we can fairly dispense with the if).

Then, just before the New Year, Epstein forwarded me a heads-up email that Alan Dershowtiz, one of Epstein's long time friends—they have a bickering brotherly relationship—and occasional legal advisors, had received from a reporter at Politico and forwarded to Epstein. The Politico reporter had been following Epstein-related court filings (there is a determined contingent of Epstein reporters) and found a new one added to an old law suit with some rather jaw-dropping claims.

Eight years after the original suit, a Florida lawyer was now seeking to add new plaintiffs to the old case. This new filing was accompanied by allegations connecting a catch-all of bold-faced names associated with Epstein more than ten years ago, including Dershowtiz and Britain's Prince Andrew, to a "sex slave" ring—indeed, that Epstein's purported sex slaves had had sex with Dershowitz and the Prince at Epstein's command.

This seemed to me to be merely a desperate, even comic-book, filing—just a lawyer trying to revive a dead case. I responded to Epstein that I doubted this would be seen as credible by anyone.

Epstein, who sometimes seems to have an out-of-body attitude to his own fate and bad press, said he thought it might be "quite a show."

Two days later, the Daily Mail, which has become the effective ground zero in the English language for anti-privilege, and moral opprobrium (the more salacious the better), and whose editor Paul Dacre has a long time feud with Prince Andrew, put the story on its front page. (Epstein also has a long relationship with the family of disgraced press baron, Robert Maxwell, another reliable target of the British press.) Flimsy and far-fetched court filings in the U.S. by settlement-hungry plaintiffs might be discounted by skeptical U.S. reporters, but, the U.K. media, constrained by onerous rules about legal proceedings in the U.K., promptly went into tabloid frenzy (even the normally sniffy Guardian, in full anti-royal and anti- billionaire fever, joined the tabloid show) and effectively exported the story back to the U.S., where Epstein's connection to Bill Clinton, and, hence as a shadow over Hillary, became the news.

"I told you," said Epstein.

There is Epstein in his inner world, trying, quite ostrich like, not to look out. Little beyond his strict realm seems palatable or even in a sense familiar to him. He's a foreigner out here. Not too long ago, I met him for lunch in the West Village, the first time in more than ten years, he said, he'd been out to lunch in a restaurant (a not particularly pleasant experience for him and we were out in 30 minutes).

Then there is the outside world pressed to the glass, appalled and titillated by the monster inside the big house—a kind of Boo Radley of the Upper East Side. I have taken friends by the Epstein mansion, and the reaction to its other-worldly size in Manhattan is almost always the same:

audible disbelief (everybody makes their own particular odd noise). Press accounts, seldom supplying new information, ever recycle and repeat the mysterious (and monstrous) billionaire mythology, with brief glimpses of him stepping out of the house (the same photos endlessly republished), and the assumption of depravity inside.

In fact, the life in the house, without wife or children or conventional domestic demeanor, in some way conforms to the most scripted fantasies: a life somewhere between Daddy Warbucks and Eyes Wide Shut.

The domesticity of the house, and the background of Epstein's problems, centers around a group of young women who act as his support staff and companions. Some have worked for him for many years, marrying, having children, and continuing as part of his business and household infrastructure. One woman, on an afternoon when I was there, recently married, had just returned from an around the world honeymoon that Epstein had arranged for her. Some are his romantic interests. His present girl friend is in dental school. One former girlfriend, Eva Andersson Dubin, a Swedish model and Miss Universe finalist, became a doctor and married hedge funder Glen Dubin and together they finance the Dubin Breast Center at Mount Sinai Hospital. Most at one time will travel with him to his floating residences—the ranch in New Mexico, the vast apartment in Paris, the Island in the Caribbean, the house in Palm Beach.

This is so outside of conventional living or staffing or romantic relationships that it is hard to describe in a straightforward or straight-faced way. It sometimes seems part of Epstein's implicit challenge: not just look at me, but do you even believe what you see? Or it seems he is just oblivious to what others are thinking. A willful and perhaps fatal tone deafness.

But Hefnerian prurience can also be quite businesslike: poised young women in a mansion on the Upper East Side with various office responsibilities—in some sense not that different from any of the art galleries in the surrounding neighborhood.

Epstein's young women mingle freely with his powerful guests, not so much as hostess or, in tabloid language, harem-like (or as "sex slaves"), but often as attentive students (that, of course, might be regarded as having its own fetish-like attraction).

Once, Epstein invited me to sit in on a day of presentations to him in his dining room by various "quants." Quant theory involves making investments based solely on mathematical and statistical models. This method can often have uncanny predictive powers. But the problem is it doesn't scale very well—the market, having discerned a pattern of successful investing, quickly copies and discounts the advantage. Epstein's effort was to identify a dozen or so promising algorithms (each quant is effectively hawking his secret sauce algorithm) and invest up to $5 million with each. I knew paltry little about this and so rather found myself identifying with the young women to whom Epstein was explaining the basic math and mechanics—out of my league, but grateful for the lesson.

The Epstein house/office is, by careful design, exclusive and club like, part hang out, part secret society. Along with the difficulty in explaining why, even after his jail term, the rich and powerful have yet beaten a path to his door, it's also notable in the fixed hierarchy of who comes to whose turf, that everybody, when they went to see Epstein, comes to him.

A week in late September, U.N. week as it happened, began, on Sunday, at Epstein's house with a colloquial for billionaires—Gates, TK, TK, TK.

Epstein, preternaturally responsive to both the price of oil and to the politics of the middle of East, entertained that evening a delegation from Qatar, including **Sheikh Hamad**, the foreign minister. Hamad, indeed, lives across the street in a similarly furnished house—he and Epstein have the same decorator. Epstein, in his relaxed and amused demeanor, kept prodding: "Why are you financing the bad guys? What do you get out of that?"

The Qatarians, in some mild diplomatic discomfort, seemed most worried that their bid for the World Cup might be compromised by bribery allegations.

At 9:00 next morning, Epstein is joined for breakfast in the dining room by Reid Weingarten, who's represented among other fat cats in trouble, Worldcom's Bernie Ebbers and Goldman Sach's Lloyd Blankfein. Weingarten, horse, with a cold, and dejected, is just back from a failed defense of former Connecticut Governor John Rowland. (Epstein: "You actually believe he was getting fucked?" Weingarten: "From minute one. I'm not a virgin. But his was the worst I've ever seen. It was like an assassination.)

After a short discussion of the Qartarian's visit—Epstein is serving the chocolate, made from pistachios grown on the Shakes farm—and speculation about who actually controls ISIS, I am asked to leave the room. Twenty minutes later, after what ever business has been transacted or particular confidences, shared I am asked back in.

"Why?" I asked Weingarten, when Epstein briefly steps out of the room, "do some many people keep coming back here, everything considered."

"Why we camp out here? I find that question as mysterious as you do," says Weingarten.

Shortly after Weingarten leaves, Epstein tells me that Eric Holder will resign by the end of the week—which he does.

Epstein summons in the next person cooling his heels in the anteroom. It's a young man named Brook Pierce, a former child actor, and dotcom high flyer—a principle in a gaming company called DEN, a notorious dotcom burnout, with its own sex scandal—who is now a leading investor in Bitcoin. He describe himself as the "the most active investor in the field."

And, indeed, is the first clear explanation I actually get about Bitcoin. It is so good that Epstein stops him and checks to see if his next appointment is here. And seconds later, Larry Summers, the former treasury secretary and President of Harvard, enters the dining room. Summers, off Diet Coke, digs deep into the Shakes chocolates, focuses in on the Bitcoin investor.

"Okay," he says, after listening for a bit, "I have opportunities here. But an additional feature of my decision problem roughly speaking is that the worst that could happen to you is that you could lose all the money you put into it. Whereas, I could go—I mean I don't look that great now—but I could go from being seen as a figure of some probity and some intelligence to being a figure of much less intelligence and much less probity…"

"Well," says Pierce in what in some dramatic understatement, "you are going to have some low quality characters playing the space…"

That evening, there is a small cocktail party, which includes the former Prime Minister of Australian, Kevin Rudd, and Thorbjørn Jaglandthe head of the Noble Peace Prize Committee, who offers an affable, but general scathing, critique of U.S. diplomacy (and a brief defense of Obama's Peace Prize award) and to whom Epstein offers a ride back to Europe on his jet.

The next morning, it's Ehud Barack, the former Israeli Prime Minister and Israel, for breakfast. Barack is, over his omelet, able to defend both Obama and Putin. Then Kathy Ruemmler, who has just left her job as White House Counsel joins. She is already in the mix as a possible next attorney general, but, in fact, will withdraw from consideration in part to work with Epstein.

Larry Summers wife, Elisa New, drops by. She teaches American poetry at Harvard and is putting together a proposal for a series on poetry that WGBH in Boston may produce and Epstein is advising on where she might go for added support (he also makes mince meat of her budget).

MORE…TK

Perhaps it's just the ultimate feminist nightmare: Men (and a few opportunistic women) continue to come to Epstein's because, no matter their public bows to modern manners, they simply don't care that he offends every aspect of feminist sensibility

Or, it's a guilty pleasure. People who know Jeffrey exchange "Jeffrey" stories. "That's Jeffrey," says Mort Zuckerman, the real estate billionaire and publisher of the Daily News (ever vitriolic in its coverage of Epstein), with a twinkle in his eye and obvious enjoyment, to tales of Epstein escapades. It is an outréness that Epstein seems delighted to cultivate. In Epstein's Paris apartment, 10,000 square feet on the Avenue Foch, a neighborhood otherwise occupied by foreign potentates, there is a stuffed baby elephant in his living room—that is, the *elephant in the room*. (At the same time, Epstein is a major supporter of cancer research and the elephant, he says, is also a reminder that elephants have 23 copies of tumor suppressor genes and humans have only 1.) The single book on his bedside table is Lolita (he is, beyond the joke, a great Nobokov fan).

Or, in a more sophisticated view, it's a two tier understanding of the world. There is a media version of the world, which most of us live in and largely accept, and are certainly influenced by. And then there are those people who live in the media itself and therefore know that it's mostly bunk. If the media says it, as likely some version of the opposite is true. I might guess too that for many of his visitors there's an order of identification: there but for the grace of God. Any hyper-prominent person might, at any time, run afoul of prosecutors, the political moment, the media, or the Internet hoi polloi.

Epstein is the Dreyfus of the rich.

And then there is the glue of wealth. Once, at lunch in the Epstein dinning room with Bill Richardson, the former Governor of New Mexico, and past Presidential aspirant, when Epstein left the room for a few minutes, I asked the obvious question, the one everybody asks each other, "How did you meet Jeffrey?" Richardson seemed surprised: "Jeffrey," he said, as though stating what should have been perfectly obvious, "is the biggest landowner in New Mexico."

And then there is Epstein's yet more structural explanation as to why after prison and with continuing tabloid infamy he can maintain his valued place. It comes back, not unexpectedly, to the nature or the needs of money:

"At a certain level of finance, almost everyone is allied with an institutional interest. You are part of government, or you want to be in government, or you are connected to a bank or other portfolio, or you have key relationships with certain corporations or industries. Because of my situation, I have none of that. I have no institutional bona fides which makes me in some sense one of the few independent sources of information and actual honest brokers. That's the usefulness of disgrace."

And then there is too, that he is right. Since I began working on this piece in September, Epstein predictions about the price of oil, yen, ruble, and euro have all born out. (If I had invested $100,000 the way Epstein said I should in early September, by the end of January I would have made $2.3 million. Alas, I did not.)

And something else, which perhaps also surely accounts for Epstein's continuing relationships with the rich and powerful:

Most everyone who is now of a certain age and certain ambition and certain status grew up in, and found they were temperamentally suited to, the new age of wealth that started in the late 1970s. A meritocracy on steroids, or, as Vanity Fair would baldly and ingratiatingly dub it, the new establishment, an increasingly parallel world, a self-invented one, at further and further remove from the ordinary one. In some sense, Epstein is just one version, picaresque, as well as louche, of this shared story.

He often tells, with some obvious marvel, his middle class to riches tale. He was born in 1953 in Coney Island. His father worked for the city's Parks Department. His mother was a housewife. He has a younger brother, Mark.

Epstein was distinguished by little other than his math talents. The captain of the math team at Lafayette High school in Bensonhurst, he goes on to Cooper Union where the tuition is free. He drops out after two years and begins taking classes at the NYU's Courant Institute of Mathematics. Then, without a college degree, hence by a slight of hand, gets a job teaching math and physics at Dalton in 1974. (A few years ago, during a chance encounter with a former Dalton math department chairman, Margo Gumport, I asked her about Epstein. She said he was the most brilliant math teacher at Dalton in her 50-year career and that she had often wondered what had become of him.)

It's his first exposure to the wealthy. They have, he concludes, just as many problems as the people in Coney Island, just different ones, almost invariably involving divorce and money. "I found it interesting as a science experiment," he recalled not long ago as we chatted about his life. "It did not really involve me. I could just stand back and watch."

Dalton fathers were attracted to him. Punch Sulzberger, the publisher of the New York Times, and a Dalton father at the time, tried to recruit Epstein to come to the Times. (Epstein recounts a story of riding with

Sulzberger in his wood paneled station wagon to the his country estate and Sulzberger talking to the chauffer on a phone from the backseat to the front.)

In 1976, another Dalton father, asking "wouldn't you rather be rich than be a teacher?" introduced him to Bear Stern's chief Ace Greenberg, a conversation Epstein recounts as this:

Greenberg: "Everyone tells me you're super smart in math and you're Jewish and you're hungry…so why don't you start working here tomorrow?"

Epstein: "What?"

Greenberg: "If your supposed to be so fucking smart, don't you understand English?"

Epstein: "Ok. Count me in."

Hence, Epstein, like many in the late 70s, arrived on Wall Street.

As will happen to a generation of others, by the fortuitous luck of being on Wall Street at that point in time, Epstein is transformed by a new, much faster, form of upward mobility. With a facility for mathematics as well as for getting along with rich men, he transforms at an even faster rate than others being quickly transformed.

He moves into a new building at 66th Street and Second Avenue—still in the shadow of the Maxwell Plum era when the 60s on Second was the glamour address—a building full of "actresses, models, and euro trash." (It would shortly become the Studio 54 era, where Epstein, who doesn't drink or take drugs, was a regular).

If on one side of Wall Street there were the salesmen (the Wolf of Wall Street model), on the other side there was a new sort of finance type able to embrace a level of acute abstraction.

"In the past," says Epstein, "investing was all about reputations and relationships. You invested in a company on the basis of who was running it. Did they have integrity? Were they married? Good family men? It was a 50's mentality. But in the mid 70s options started to be traded. In essence, the first formal derivatives. The movement of this instrument is not directly attached to the stock price. The world of investing began turning from relationships to math. In a sense I didn't really make money as much as I did create it. This was intellectual activity of a fairly high order."

Intellectual activity aside, he meets Helen Gurley Brown and she makes him Cosmopolitan Magazine's Bachelor of the Month in 1980.

"What," I ask, "was your social life like?"

"Well, I was a playboy."

"That's all? Not looking to get married?"

"No. Never. I never wanted to get married. I wanted sex. I liked women. I wanted freedom. I was attracted to the rich because of their freedom. But I wanted also to avoid their burdens. And I didn't want to hide. I didn't want to be a hypocrite. I wanted to be free. I was not remotely ambivalent about what I wanted: to be free. That was the reason to make money."

His rise at Bear Sterns was a steep one. And he soon became the protégée of Jimmy Cayne (also hired by Ace Greenberg on a whim—he met him in a bridge game—who would go on to run Bear and to lose his fortune in Bear's 2006 collapse). Epstein's leave taking or ouster from Bear is the result of politics, envy, overreaching, or a securities violation, or…unclear. But, no matter, he leaves in 1982 with billionaire clients, including Marvin Davis, a real estate developer who owns Twentieth Century Fox, and Herb Seigel, a major media investor in the 1980s. Epstein is dating Morgan Fairchild, a television star in the 1980s rich-family soap operas, Dallas and Falcon Crest.

Now begins the Concorde phase of his life—and the Concorde phase of the 1980s. If the 80s are happening pell mell in New York, they're happening at double time and catch up speed in London. Epstein is 30 years old and living, in Lifestyle of the Rich and Famous fashion, at English shooting parties at country estates with Saturday night black tie dinners, where he's meeting the richest families in Europe.

"I don't take it seriously," Epstein recounts. "I'm not caught up in it. I'm not trying to make a billion dollars. There is no ultimate goal. Or its just to meet smart people, interesting people. But no long-range plans. Often no short-term plans either. I would head to Kennedy and, on the theory that most important events are serendipitous, I wouldn't decided where I was going until I got there."

At the same time, he is developing a perception, or, at least a market differentiation: the hyper wealthy had different problems than the very wealthy. Dealing with a billion dollars was different from dealing with $100 million:

"If you had a billion dollars I would think the last thing you should be worried about was money, in truth money was what you most worried about. How to make more of it, how to give away more of it, how to protect you children from it, how to hide it from your wife or husband, how to minimize your taxes on it. The traditional wealth service structure, an accountant, and investment advisor, a personal lawyer, and an idiot brother-in-law, became hopelessly outdated as amounts exponentially increased.

"You can't spend a billion dollars, you can just relocate it to a different investment class. And you can't give away a billion dollars without a vast staff, in effect going into the business of giving away money, yet another business you are likely to know little about."

At just about this point in the narrative, the questions or the incredulity begins in social circles and eventually in the media. He begins to acquire the major symbols of riches but does this without position, public holdings, or obvious paper trails. In essence, the formulation is, how can a person have enough money to merit increasing attention, but no clear way of having gotten it. Epstein gets stuck in that tautology. He may be rich, but he is without institutional protection or bona fides. He is a questionable substrata of wealth. He's a freelancer.

That's the rub: he doesn't work for anyone. Without institutional credentials he's…well, nobody knows what.

For a period, one part of his activities he says is recovering monies for countries looted by exiled dictators or military strongmen. If early in his career he might seem like a sort of George Peppard (there's a physical resemblance) in Breakfast at Tiffany's, a charming hustler, later he's George Peppard in Banacek, a smart and astute operator.

Then, in his telling, he's representing a series of vastly wealthy people and families. He's not just doing their bidding or their investing, he's helping them to imagine the ambitions of their wealth. They've satisfied their business dreams. Now there are the separate challenges and possibilities of their actual wealth.

In essence, as he becomes more public the response to this, as a function of envy and the media's need for definition, is "bullshit." True, there is no clear alternate narrative. No one is accusing him of anything, accept, sometimes, guilt by association. (In addition to Robert Maxwell, who will be accused of fraud, there's Steven Hoffenberg, briefly a New York high flyer, who went to jail for a Ponzi scheme, for whom Epstein acted as a consultant.) But the characterization persist: if it's not clear, it must be murky. Sure, Goldman Sachs partners and tech fortunes, but what to make of a Coney Island, Zelig-like no-namer?

In 1994, just at the moment when Prince Charles is on television acknowledging his love for Camilla Parker Bowles, Jeffrey Epstein is sitting with his arm around Princess Diana at a dinner at the Serpentine Galley in London (Diana is wearing her "revenge" dress that evening). Graydon Carter, into his second years as editor of Vanity Fair, is also at the dinner. Epstein's rise and Carter's rise are not, with a little critical interpretation, that different. Both are a function of the age of new money, both are helped by strategic relationships with the exceptionally wealthy (i.e. they are social climbers), both men have made themselves up. To say that Epstein, in the company of the Princess, sticks in Carter's craw would be an understatement. Epstein becomes one of the "what do you know about him" figures in Carter's gossip trail—a story waiting to happen. A variety of the gossip that begins to circulate about Epstein—for instance, that he secretly films his guests—is seeded by Carter, who once advised me not to go to Epstein's house or accept a ride in his car least I risk being blackmail. ("For what?" I asked Carter. "For you have no idea," said Carter.)

Epstein is playing a cat and mouse game with his own growing wealth and influence. He is private and secretive, but grandly so. He joins the board of Rockefeller University. He's suddenly on the Trilateral commission, that cabal of business people who fancy themselves, and who are fancied by conspiracy buffs, as running the world. He buys from his client Limited Founder Les Wexner the larges private house in Manhattan. (Rumors will continue for many years, that Wexner owns the house and Epstein is just squatting in it—an 18-year squat.) He buys an airplane. He buys another. He expands his holdings in New Mexico. He begins a Zanadu refurbishment of his Caribbean Island.

He befriends Bill Clinton in his new after-office life.

And that's quite the fatal pairing.

The post-Monica Clinton, now having pardoned the on-the-lam financier Marc Rich, is suddenly being ferried around in the jet of…*who* exactly?

The New York Post is the first to take formal media note of the Clinton-Epstein connection, hinting at a sex and money bromance. The instinctively private Epstein is not just increasingly exposed, but clearly curious about the nature of exposure.

I met Epstein around this time. Epstein had become a more and more active backer of advanced scientific research—ultimately he will donate $30 million to Harvard for a theoretical physics research center—and in 2002 he was taking a small group of scientists out to the TED conference in Monterey. The TED organizers invited various other TED participants, including me, to join the flight. A small group assembled at the private plane terminal, most of us unfamiliar with our benefactor, and as we headed in the direction of the discrete private plans we were gently pointed to our ride: Epstein's 727.

It is some thoroughly updated drawing room set-up, all of us nervously ensconced in this luxury plane, waiting for our unknown host to arrive—and soon he does, tanned, relaxed, with wide open smile, accompanied by three young women.

It would be unlikely, outside of a men's magazine fantasy of the luxe life, that you could locate this in reality. Epstein's attentions, taking time with each of his passengers, seemed impossible to account for. The quiet of the plane, engineered into acoustic perfection, seemed spooky. Epstein's three companions were witty, poised, helpful as well as powerfully alluring—as though stewardesses of bygone times.

(One more thing about this trip: Google founders, Larry Page and Sergey Brin, with their company still in its infancy, came out to see the plane and, with a few other Googlers, literally ran whopping from one end of the plan to the other. Then they described for Epstein, in what I can not now remember as a put on or entrepreneurial brainstorm, a brand extension in which they would market a line of Google bras with the Os as convenient cups. In fact, the name Google, they said, was invented out of the belief that men would focus on a word with two Os in it.)

Not long after this trip, Epstein's assistant called to invite me for tea at his house in New York, where Epstein, with what seemed to me little understanding of the subject, began to ask me about media—the upside, downside, and nature of media coverage. New York magazine was then soliciting him for a profile, as was Vanity Fair, who had assigned the British tabloid reporter, Vicki Ward, to the job.

Both profiles, New York's by Landon Thomas, pivot on the Clinton connection and detail the same quandary, how a man without clear institutional bona fides nevertheless achieves wealth and influence. Ward—who would more recently assert in the Daily Beast, that she was barred by Vanity Fair from writing about under-age sex evidence (a fact that could be read the other way: Vanity Fair, even looking to take down Epstein, did not find the evidence credible)—follows a rabbit hole of questionable contacts who might or might not have been the source or sources for Epstein's wealth, but gets no closer to an answer, beyond confirming her own sense of dubiousness.

Epstein, sensing that he might be exposing himself, tried to stop the process (Ward, well known for offering an operatic view about her reporting exploits, says he threatened her), called Carter and said he was having second thoughts about being a public figure.

"Then you should live in a two bedroom apartment in Queens," responded Carter.

And then the troubles began.

Epstein, in man-who-can-have-everything fashion, has, for many years, ordered up a daily massage following his workout sessions.

"Often these were massage massages," says Epstein matter of factly, "but sometimes these were happy ending massages, especially in Palm Beach, where there are many massage parlors—'Jack Shacks,' they're called—that do outcalls. There was no sex. An often there was no happy ending. Often I would be on the phone for the entire massage. There were however a lot of massages and a lot of girls, with one girl recommending others."

It is after Epstein's round of publicity and widely touted association with Clinton, that the mother of one of the massage parlor girls who went to Epstein's house (most of the girls return to Epstein's house many times) calls the police. The police interview the girl, Saige Gonzales, who then supplies names of other girls. Some of whom are found to be younger than 18.

In the end, the police track down 18 girls—nine who are under 18; the others in their 20s and 30s; one woman is in her 60s—a number of whom give statements describing scenarios not terribly different from Epstein's description above, except each is laid out in clinical, lurid, and near-identical detail. A cold and forceful Epstein demands that unwitting juveniles (though they have come here for this very purpose) perform repulsive (or at least repulsively described) acts on him. (Although the nature of the allegations will dramatically grow, nobody at this point alleges that he did anything to them.)

Epstein, tipped to the investigation, vastly raises the stakes, calling Dershowitz, who flies into Palm Beach to put the local authorities in their place—alienating Palm Beach officialdom—and, doubling down on the profile of the case. Dershowitz brings in Roy Black the famous criminal attorney who defended William Kennedy Smith in his rape trial in Palm Beach.

Here's the narrative: the shadowy rich man, friend of the louche and disgraced President, at all times surrounded by a retinue of gorgeous retainers doing his bidding, is now found to have gathered a network of wrong-side-of-the-tracks Palm Beach girls to provide him with weird sexual services. (It somehow reads weirder that he doesn't have sex with them.) To boot, his former girl friend, Ghislaine Maxwell—the daughter of the disgraced Robert Maxwell—encouraged at least one of the girls to come to Epstein's home (and forever more has become a fixture of further weird possibilities in this tale).

Palm Beach Police Chief Michael Reiter is reported to say: "This is bigger than Rush Limbaugh," who, in a storm of publicity, has just been arrested in Palm Beach for possession of controlled drugs.

On one side are some of the nation's most powerful defense attorneys (who, increasingly, seem more stumblebum than effective), on the other side, a round-up of hapless girls, with sensational tales of perversion and infamy (in the telling they are not so much sex workers, as Dickensian victims), relatively speaking giving the Palm Beach authorities the choice between utter capitulation to the powerful or standing on the side of the exploited and powerless.

Still, with a critical eye, it also quite appears to be a straightforward tale of prostitution (however more or less kinky). And even though some of the girls are minors, age is not a distinguishing factor in a prostitution charge in Florida, nor in most places (in New York, for instance, at this time soliciting sex with anyone over the age of 14 is a class D misdemeanor calling for a $100 fine).

In fact, Saige Gonzales told the police that she lied about being 18 because otherwise she knew she would not have been admitted to the house.

The local sex crimes prosecutor, Lana Belhalevic, interviews the girls and determines that the offense is solely related to prostitution—that there are no innocent victims.

Dershowitz rejects a series of lower-level plea deals and Palm Beach District Attorney Barry Krischer takes the unusual step of empanelling a grand jury, which returns with a recommendation of a single count of soliciting a prostitute—a charge without jail time. (And Epstein can apply to have his record expunged after a year.)

At which point, Reiter, the police chief, at odds with the District Attorney's office, recruits the involvement of the FBI. This is of course the Bush-era FBI and Epstein presents quite the Clinton-connected scandal. Still, solicitation, even of a minor, is not a federal crime. The FBI hits on the novel interpretation that if Internet solicitation can be considered interstate commerce, so can telephone solicitation, permitting them to begin a deep dive investigation into Epstein's friends, many of whom receive subpoenas and are threatened with prosecution.

It's all quite in the eye of the beholder: On the one end, Epstein is paying for sex acts (Epstein paid $200 for a massage with or without happy ending), on the other, he is abusing teenage girls. It's a catch-22: How can a girl not old enough to vote be a prostitute? And yet, many girls not old enough to vote *are* prostitutes.

Compounding Epstein’s predicament, the world outside of his carefully constructed and controlled environment is someplace that he seems not just ill-equipped to handle but in which he seems to be blindly grouping about (i.e. he’s totally tone deaf). I visited him once during this time and found him weighing the conflicting advice of some of the most vaunted and egomaniacal lawyers (along with Dershowitz and Black, celebrity criminal attorney, Gerald Lefcourt, and Clinton prosecutor, Ken Starr) of the day—anyone with new advice, Epstein seemed to hire—as well as a catchall of the leading crisis managers, who he seemed to retain at will, all wrangling for fees and primacy.

Certainly, the upshot of his dealings with the Justice Department seem to involve a through-the-looking-glass logic. The government threatens to prosecute him (with the possibility of a 10-year sentence) and various friends, associates, and lovers, or offers an ass-backwards sort of deal in which Epstein’s lawyers have to go to the Palm Beach authorities and get them to agree to charge him with an offense that will send him to jail and get him a sex offender status. Except that a solicitation charge won’t produce that result. Therefore he has to agree also to a procurement or pimping charge (even though he has paid money, not received it—the sine qua non of pimping). What’s more, he has to agree to pay the legal fees of any of the girls who want to sue him—and, not to defend himself from their suits—forcing him to settle with each of the girls for what are reportedly high 6-figure sums or more.

He’s sentence to jail in 2008 for 18 months and serves 13 (while Epstein is now frequently accused of somehow managing to cut short his sentence, almost all Florida prisoners serve only 70% of their officially sentenced time).

This hardly ends the legal catch all. Epstein's butler, Alfredo Rodriguez, steals and tries to sell an alleged journal or calendar with Epstein’s activities—but he tries to sell it to an undercover agent. Rodriguez is sentenced to 18 months in jail on a charge of theft and of withholding evidence (and a further two and half years on a related gun charge). Scott Rothstein, a lawyer whose firm represented additional girls in their suits against Epstein, also goes to jail for recruiting investors to pay for these suits on the fraudulent basis that settlements had already been reached. It’s the largest fraud in Florida history and Rothstein receives a 50-year sentence.

Then, Brad Edwards, Rothstein’s former partner, sues the federal government in 2008 for abridging the rights of two of the original complainants under the Crime Victim Rights Act (giving victims the right to be consulted about the disposition of their cases) regarding the Justice

Departments agreement not to prosecute in favor of the state action. In 2014, Edwards tries to ad Virginia Roberts, another of the original complainants, who has previously settled with Epstein, to the long-running suit. Roberts who was paid a settlement under the original terms of Epstein's agreement—that he would pay attorney's fees and not oppose any law suits against him—is now trying to overturn the agreement under which she was paid, and, with Edwards, further suing Epstein for $50,000,000.

As the most vocal of the accusers, Roberts, with the Daily Mail being her prime outlet, emerges now with what is billed as a memoir of her "sex slavery" with Epstein, written ten years after the fact. She names a number of people as being at Epstein's Island home, including Clinton and Al Gore and his wife, who Epstein's lawyers insists were never there—proof available through secret service records.

The FBI is now arguing that Roberts should not be party to the suit against the government because she refused to cooperate with the government in its investigation in 2007, hence has no standing as a victim. (At the same time, the FBI included her on the list of 40 victims with whom it mandated Epstein reach a settlement.)

It is hard to find a more hyperbolic intersection of media and lawyers then in Epstein's case.

Edwards, over the six years of his law suit, tries to depose Clinton, Donald Trump, and Dershowitz—almost all of his targets coming directly from the original Vanity Fair and New York Magazine articles about Epstein.

In addition to Prince Andrew as a British hot button, first connected to Epstein through Roberts' interview with the Daily Mail in 2010, Clinton takes on a new role as Hillary spoiler through his connection, real or imagined, to Epstein and sex slaves.

Almost everybody identified in any story about Epstein is approached by other media seeking to write about Epstein, often with financial incentives.

No new details emerge. Every aspect of the current story is based on court filings describing events that may or may not have taken place prior to 2007.

A recent Reuters story identified a charity that Epstein has not given money to in 15 years that said if he does give again, they would give it back.

The world cleanly divides, with Epstein (and friends) behind secure walls and the Mail and social media and upholders of new norms, ever more incredulous and apoplectic that Epstein not only walks free but prospers too.

Although he has spent more than a year in jail and paid out what may be as much as $20 million, he yet seems somehow to have gotten away with it—that worst sin of all. He is the unrepentant catch all of up-to-the-minute badness: the financier whose wealth is a product of Wall Street math rather than work; a rich middle-age white man who not only parades his wealth and entitlement, but has a Peter Pan complex to boot; an insistent Playboy in a correct and prudish world; someone who somehow didn't get the memo about vast changes in mores and culture.

When I suggested recently that one obvious way to blunt the animus is to get married, he said he would rather go back to jail.

He is Calvin Harris's song, It Was Acceptable in the 80s, come to life.

This is all, inevitably, a Gatsby-like story. But Gatsby in New York Post and Daily Mail parlance would likely be a freaky financier too.

And it's a story about the limitation of journalism, in which the most compelling parts of the story—it would take a long running cable show to do justice to the meaning of Epstein's ambitions and impulses—need to be sacrificed for not just moral certainty but for a rather preposterous fantasy of moral certainty.

Anyway, I hope I get invited back to Jeffrey's house.

It’s an absurdly vast house, among the largest in Manhattan, but the dining room is windowless, creating a hermetic or stop-time sense, broken only by the household help ferrying in time-of-day-appropriate foods and beverages.

In sweatshirt, draw-string pants, palm beach slippers, and half glasses, Jeffrey Epstein sits at the head of the table. He spends most of his day in the dining room, remote from the world, in front of a lap top and beside a row of reading glasses (there are a lot of them in case, apparently, he misplaces a pair, but being quite meticulous he never does) advising, or instructing, a startling collection of the rich and powerful, slotted in on an hourly basis.

The apartness of Epstein’s dining room might seem to offer some buffer in this leveled, angry age for a super rich man who attends to even more fabulously rich men (and the occasional extremely rich woman). On the other hand, with the paparazzi often posted near by, the outside world seem dangerously close too. (Once I arrived for a visit and found several police cars blocking the street and thought the worst—they’d come for Jeffrey. But it was a security detail for a controversial head of state, also visiting him.)

His subject for the morning is “hyper wealth.” His subject is always wealth—how capital should react to the given global political, economic, and cultural moment. The otherwise baronial dining room is disturbed by an ever-present white board, on which he scribbles calculations and notes, conducting perhaps the world’s most rarified economics class, often to many of the world’s finance ministers and foremost economists.

Epstein’s apartness or parallel life reflects much of the other-worldly characteristics of the wealth revolution that began in the late 1970s and that continued through the Wall Street boom of the 80s, the tech boom of the 90s—surviving, to often bitter attack, the banking crisis—and that has now seen the emergence of the international billionaire and oligarch class. He has quite turned himself into a hyperbolic representations of this wealth and hence, in a way, become accountable for it.

His own way to riches was to become a canny student of the new money, as well as one of its large than life characters, as it grew to an unanticipated and disruptive scale. His stock in trade is not precisely the making of money, but the issues that arise when money, at a heretofore unimaginable rate, makes itself, altering many basic economic, social and personal calculations.

He recounts a dinner he had two nights before. It is, like much of what he does, a conspiracist’s fantasy. The six men at this dinner, all technology entrepreneurs, represented, together, several hundred billion dollars.

"In the past, only governments had this kind of money," says Epstein conversationally, but making a pedagogical point, "money of a reality altering scale. In fact, it used to be that the rich, reaching a certain point of philanthropy, merely hoped to help make the world a better place, now they want to change the world. Rockefeller and Carnegie were, as examples of social-engineering philanthropy, unique. They alone had such resources and will. Now you have legions of people who have to give away vastly larger fortunes than Rockefeller or Carnegie had at their disposal, or might even have imagined.

"Except that it's actually hard to give away this kind of wealth, without unintended consequences that can cause more problems than you're solving."

Epstein's long-time business thesis is that the rich know very little about money. They may know about their own businesses, but the great sums that are the result are an ultimate after thought and demand an entirely different sort of intellectual discipline. The Forbes 400, says Epstein, not immune to an amount of wonder, increased their wealth by $500 billion last year, meaning, in effect, that on average every Forbes-list billionaire makes more than another billion every year. And, points out the 62-year-old Epstein, they will almost all be dead in 40 years, most well before that, meaning $4.2 trillion, compounding everyday, will have to be given away. "So, to understand the future, what you have to begin to do is follow the money, not in Watergate-like terms backwards, as in who has gotten it, but forwards to where it will go and who will get it."

Epstein can find himself echoing aspects of Thomas Piketty on the inequities of the accumulation of wealth ("the divide is between people with assets, which appreciate, and people without assets, who fail to advance—that is, of course, the miracle of compounded interest"), except for the fact that Epstein, knowing the rich, understands a curious point that Piketty doesn't: "Nobody, *nobody*, wants to give it all to their children. Everybody now has the modern appreciation that one of the curses of great wealth is that it can make your kids weird and fucked up."

Epstein's position in this private allotment of a decent fraction of the U.S. Gross Domestic Product is not as philanthropist but as a higher sort of banker or guru or brain—a rich whisperer—making him, in addition to rich himself, arguably, among the most influential people you've never heard of.

Though, likely, you have heard of him, but not for his prowess with high abstraction, but for a scandal of such luridness that he is, for a great many, the poster child of the lawlessness of privilege, and for a much smaller circle, the poster child for what can happen when you become the target of a resentful world. He is *that* Epstein, according to the Daily Mail—among his most frothing-at-the-mouth antagonists—"one of America's most notorious sex offenders."

And yet the mighty and powerful, apparently evaluating the nature of disgrace on their own terms, beat a path to his door. It's a fantastic conclave of influence in his dining room: financiers, billionaires, heads of state, economic ministers.

He surely represents the kind of insiderism that is mostly just a figment in outsiders' fantasies. Except for the fact that, straining credulity, Epstein is real. His is an ultimate sort of fantasy of power, wealth, and secrecy. (In 2004, when the then owners of this magazine put it up for sale, I was involved with a group trying to buy it—an effort in which Epstein volunteered to invest $20 million. New York was subsequently sold to another wealthy investor.) Were the International Jewish conspiracy to actually exist, it might be here in his dining room (while not everybody in his circle is Jewish, an obvious "think Yiddish" point of view prevails).

Without ever being asked to keep what I have heard here off the record, I've willingly done so, least I not be invited back. And, too, to protect him. Who would understand Jeffrey? Who could explain him?

Certainly Epstein's past encounters with the press (and in many ways with the entire outside world) have been about as disastrous as any could be, helping to open a Pandora's box of lifestyle vulnerabilities that sent him to prison on a prostitution charge in 2008.

And yet here he is, in his 50,000 square foot mansion, dispensing advice to world leaders and business titans.

Indeed, Epstein has been advising Bill Gates on a new way to increase the already vast clout of the Gates Foundation by adding funds from other wealthy individuals that can use the Gates resources (the Gates Foundation now employs 1,200 people), but which can be directed to separate causes and goals. And it is Gates who at the end of the summer began prodding Epstein to begin a process of public rehabilitation.

Hence, as part of an effort to get "out in front" of the unfavorable notice that might greet Gates' public association with him, Epstein agreed to several on the record conversation with me, in the hope, on his part, that, after five years since his release from prison and relative peace, he might be able to leaven his reputation. And with the hope on my part of learning more about how and if the rich are different than you and me (although we can fairly dispense with the if).

Then, just before the New Year, Epstein forwarded me a heads-up email that Alan Dershowtiz, one of Epstein's long time friends—they have a bickering brotherly relationship—and occasional legal advisors, had received from a reporter at Politico and forwarded to Epstein. The Politico reporter had been following Epstein-related court filings (there is a determined contingent of Epstein reporters) and found a new one added to an old law suit with some rather jaw-dropping claims.

Eight years after the original suit, a Florida lawyer was now seeking to add new plaintiffs to the old case. This new filing was accompanied by allegations connecting a catch-all of bold-faced names associated with Epstein more than ten years ago, including Dershowtiz and Britain's Prince Andrew, to a "sex slave" ring—indeed, that Epstein's purported sex slaves had had sex with Dershowitz and the Prince at Epstein's command.

This seemed to me to be merely a desperate, even comic-book, filing—just a lawyer trying to revive a dead case. I responded to Epstein that I doubted this would be seen as credible by anyone.

Epstein, who sometimes seems to have an out-of-body attitude to his own fate and bad press, said he thought it might be "quite a show."

Two days later, the Daily Mail, which has become the effective ground zero in the English language for anti-privilege, and moral opprobrium (the more salacious the better), and whose editor Paul Dacre has a long time feud with Prince Andrew, put the story on its front page. (Epstein also has a long relationship with the family of disgraced press baron, Robert Maxwell, another reliable target of the British press.) Flimsy and far-fetched court filings in the U.S. by settlement-hungry plaintiffs might be discounted by skeptical U.S. reporters, but, the U.K. media, constrained by onerous rules about legal proceedings in the U.K., promptly went into tabloid frenzy (even the normally sniffy Guardian, in full anti-royal and anti- billionaire fever, joined the tabloid show) and effectively exported the story back to the U.S., where Epstein's connection to Bill Clinton, and, hence as a shadow over Hillary, became the news.

"I told you," said Epstein.

There is Epstein in his inner world, trying, quite ostrich like, not to look out. Little beyond his strict realm seems palatable or even in a sense familiar to him. He's a foreigner out here. Not too long ago, I met him for lunch in the West Village, the first time in more than ten years, he said, he'd been out to lunch in a restaurant (a not particularly pleasant experience for him and we were done in 30 minutes).

Then there is the outside world pressed to the glass, appalled and titillated by the monster inside the big house—a kind of Boo Radley of the Upper East Side. I have taken friends by the Epstein mansion, and the reaction to its other-worldly size in Manhattan is almost always the same: a gasp. Press accounts, seldom supplying new information, ever recycle and repeat the mysterious (and monstrous) billionaire mythology, with brief glimpses of him stepping out of the house (the same photos endlessly republished), and the assumption of depravity inside.

In fact, the life in the house, without wife or children or conventional domestic demeanor, in some way conforms to the most scripted fantasies: a life somewhere between Daddy Warbucks and Eyes Wide Shut.

The domesticity of the house, and the background of Epstein's problems, centers around a group of young women who act as his support staff and companions. Some have worked for him for many years, marrying, having children, and continuing as part of his business and household infrastructure. One woman, on an afternoon when I was there, recently married, had just returned from an around the world honeymoon that Epstein had arranged for her. Some are his romantic interests. His present girl friend is in dental school. One former girlfriend, Eva Andersson Dubin, a Swedish model and Miss Universe finalist, became a doctor and married hedge funder Glen Dubin and together they finance the Dubin Breast Center at Mount Sinai Hospital. Most at one time will travel with him to his other floating residences—the ranch in New Mexico, a vast apartment in Paris, the Island in the Caribbean, the house in Palm Beach.

This is so outside of conventional living or staffing or romantic relationships that it is hard to describe in a straightforward or straight-faced way. It sometimes seems part of Epstein's implicit challenge: not just look at me, but do you even believe what you see? Or it seems he is just oblivious to what others are thinking. A willful and perhaps fatal tone deafness.

But Hefnerian prurience can also be quite businesslike: poised young women in a mansion on the Upper East Side with various office responsibilities are really not that different from any of the art galleries in the surrounding neighborhood.

Epstein's young women mingle freely with his powerful guests, not so much as hostess or, in tabloid language, harem-like (or as "sex slaves"), but often as attentive students (that, of course, might be regarded as having its own fetish-like attraction).

Not long ago, Epstein invited me to sit in on a day of presentations to him in his dining room by various "quants." Quant theory involves making investments based solely on mathematical and statistical models. This method can often have uncanny predictive powers. But the problem is it doesn't scale very well—the market, having discerned a pattern of successful investing, quickly copies and discounts the advantage. Epstein's effort was to identify a dozen or so promising algorithms (each quant is effectively hawking his secret sauce algorithm) and invest up to $5 million with each. I knew paltry little about this and so rather found myself identifying with the young women to whom Epstein was explaining the basic math and mechanics—out of my league, but grateful for the lesson.

The Epstein house/office is, by careful design, exclusive and club like, part hang out, part secret society. Along with the difficulty in explaining why, even after his jail term, the rich and powerful continued to beat a path to his door, it's also notable in the fixed hierarchy of who comes to whose turf, that everybody, when they went to see Epstein, comes to him.

A week in late September, U.N. week as it happened, began, on Sunday, at Epstein's house with a colloquial for billionaires—Gates, Mort Zuckerman, and Peter Thiel [TK].

Epstein, preternaturally responsive to both the price of oil and to the politics of the middle of east, entertained that evening a delegation from Qatar, including Sheikh Hamad Bin Jassim, the foreign minister. Hamad, indeed, lives across the street in a similarly furnished house—he and Epstein have the same decorator. Epstein, in his relaxed and amused manner, kept prodding: "Why are you financing the bad guys? What do you get out of that?"

The Qatarians, in some mild diplomatic discomfort, seemed most worried that their bid for the World Cup might be compromised by bribery allegations.

At 9:00 next morning, Epstein is joined for breakfast in the dining room by Reid Weingarten, who's represented among other fat cats in trouble, Worldcom's Bernie Ebbers and Goldman Sach's Lloyd Blankfein and is one of attorney general Eric Holder's closest friends. Weingarten, horse, with a cold, and dejected, is just back from a failed defense of former Connecticut Governor John Rowland.

After a blow by blow of the trial, there's a discussion of the Qartarian's visit—Epstein is serving chocolate made from pistachios grown on the Sheikh's farm—and speculation about who actually controls ISIS.

"Why?" I asked Weingarten, when Epstein briefly steps out of the room, "do some many people keep coming back here, everything considered."

"Why we camp out here? I guess because there's no place like it."

Epstein summons in the next person cooling his heels in the anteroom. It's a young man named Brock Pierce, a former child actor, and dotcom high flyer—a principle in a gaming company called DEN, a notorious dotcom burnout, with its own sex scandal—who is now a leading investor in Bitcoin. He describe himself as the "the most active investor in the field."

And, indeed, is the first clear explanation I actually get about Bitcoin. It is so good that Epstein stops him and checks to see if his next appointment is here. And seconds later, Larry Summers, the former treasury secretary and President of Harvard, enters the dining room. Summers, off Diet Coke, digs deep into the Sheikh's chocolates, focuses in on the Bitcoin investor.

"Okay," he says, after listening for a bit, "I have opportunities here. But an additional feature of my decision problem roughly speaking is that the worst that could happen to you is that you could lose all the money you put into it. Whereas, I could go—I mean I don't look that great now—but I could go from being seen as a figure of some probity and some intelligence to being a figure of much less intelligence and much less probity…"

"Well," says Pierce in some dramatic understatement, "you are going to have some low quality characters playing early in the space…"

That evening, there is a small cocktail party, which includes the former Prime Minister of Australian, Kevin Rudd, and Thorbjørn Jaglandthe head of the Noble Peace Prize Committee, who offers an affable, but general scathing, critique of U.S. diplomacy (and a brief defense of Obama's Peace Prize award) and to whom Epstein offers a ride back to Europe on his jet.

The next morning, it's Ehud Barack, the former Israeli Prime Minister and Israel, for breakfast. Barack is, over his omelet, able to defend both Obama and Putin. Then Kathy Ruemmler, who has just left her job as White House Counsel joins. She is already in the mix as a possible next attorney general, but, in fact, will withdraw from consideration in part to work with Epstein. [TK Ruemmler quotes…]

Larry Summers wife, Elisa New, drops by. She teaches American poetry at Harvard and is putting together a proposal for a series on poetry that WGBH in Boston may produce and Epstein is advising on where she might go for added support (he also makes mince meat of her budget).

There follows the former head of the UN Security Council, Hardeep Purie, and then head of the central bank of Kazakhstan, Kairat Kelimbetov.

Then Nathan Myhrvold the former chief technology office at Microsoft. Then Martin Nowak a Professor of Biology and Mathematics and Director of the Program for Evolutionary Dynamics at Harvard, the institute that Epstein has funded with $30 million. Part of Nowak's research has to do with trying to "describe cancer mathematically." Epstein preempts Nowak's explanation (which I'm not quite getting): "Think of cancer the same way as you think of a terrorist group. The NSA has been able to thwart a great number of terrorism acts by intercepting communication signals from one terrorist to another. That same dynamic, a form of signal intelligence, of finding a terrorist in Europe, can be used to intercept communication between cancer sells. Cancer cells merely communicate in protean code rather than electronic code. If you can decode what the signals are saying you can jam those signal between terrorist calls—essentially wipe out their cell phones. Likewise if you can decode biological signals you can jam them too, that's the holy grail."

Then Richard Azel, a Nobel prize winner in physiology. Then Ron Baron who, in his Baron Fund, has $26 billion under management. Then Josh Harris the co-founder of Apollo Global Management ($164 billion under management) and owner of the New Jersey Devils and the Philadelphia 76ers.

Perhaps it's just the ultimate feminist nightmare: Men (and a few opportunistic women) continue to come to Epstein's because—no matter their public bows to modern manners—they simply don't care that he offends every aspect of reconstructed gender and political sensibilities. In private, it remains a man's world—a rich man's world.

Or, it's a guilty pleasure. People who know Jeffrey exchange "Jeffrey" stories. "That's Jeffrey," says Mort Zuckerman, the real estate billionaire and publisher of the Daily News (ever vitriolic in its coverage of Epstein), with a twinkle in his eye and obvious enjoyment, to tales of Epstein escapades. It is an outréness that Epstein seems delighted to cultivate. In his Paris apartment, 10,000 square feet on the Avenue Foch, a neighborhood otherwise occupied by foreign potentates, there is a stuffed baby elephant in his living room—that is, the *elephant in the room*. (Epstein says too it's a reminder that elephants have 23 copies of tumor suppressor genes and humans have only 1.) The single book on his bedside table is Lolita (he is, beyond the joke, a great Nobokov fan).

Or, in a more sophisticated view, it's a two tier understanding of the world. There is a media version of the world, which most of us live in and largely accept, and are certainly influenced by. And then there are those people who live in the media itself and therefore know that it's mostly bunk. If the media says it, as likely some version of the opposite is true. I might guess too that for many of his visitors there's an order of identification: there but for the grace of God. Any hyper-prominent person might, at any time, run afoul of prosecutors, the political moment, the media, or the Internet hoi polloi.

In this view, Epstein is a sort of Dreyfus of the rich.

And then there is the glue of wealth. Once, at lunch in the Epstein dinning room with Bill Richardson, the former Governor of New Mexico, and past Presidential aspirant, when Epstein left the room for a few minutes, I asked the obvious question, the one everybody asks each other, "How did you meet Jeffrey?" Richardson seemed surprised: "Jeffrey," he said, as though stating what should have been perfectly obvious, "is the biggest landowner in New Mexico."

And then there is Epstein's yet more structural explanation as to why after prison and with continuing tabloid infamy he can maintain his valued place. It comes back, not unexpectedly, to the nature or the needs of money:

"At a certain level of finance, almost everyone is allied with an institutional interest. You are part of government, or you want to be in government, or you are connected to a bank or other portfolio, or you have key relationships with certain corporations or industries. Because of my situation, I have none of that. I have no institutional ties which makes me in some sense one of the few wholly independent sources of information and actual honest brokers. That's the usefulness of disgrace."

And then there is too, that he is right. Since I began working on this piece in September, Epstein predictions about the price of oil, yen, ruble, and euro have all born out. ((If I had invested $100,000 the way Epstein said I should in early September, by the end of January I would have made $TK million. Alas, I did not invest.)

And something else, which perhaps also surely accounts for Epstein's continuing relationships with the rich and powerful:

Most everyone who is now of a certain age and certain ambition and certain status grew up in, and found they were temperamentally suited to, the new age of wealth that started in the late 1970s. A meritocracy on steroids, or, as Vanity Fair would baldly and ingratiatingly dub it, the new establishment, an increasingly parallel world, a self-invented one, at further and further remove from the ordinary one. Epstein is just one version, albeit picaresque, as well as louche, of this shared story.

He often tells, with some obvious marvel, his middle class to riches tale: born in 1953 in Coney Island, father works for the city's Parks Department, mother a housewife.

The captain of the math team at Lafayette High school in Bensonhurst, goes on to Cooper Union where the tuition is free. He drops out after two years and begins taking classes at the NYU's Courant Institute of Mathematics. Then, without a college degree, hence by a slight of hand, gets a job teaching math and physics at Dalton in 1974. (A few years ago, during a chance encounter with a former Dalton math department chairman, Margo Gumport, I asked her about Epstein. She said he was the most brilliant math teacher at Dalton in her 50-year career and that she had often wondered what had become of him.)

It's his first exposure to the wealthy. They have, he concludes, just as many problems as the people in Coney Island, just different ones, almost invariably involving divorce and money. "I found it interesting as a science experiment," he recalled recently as we chatted about his life. "It did not really involve me. I could just stand back and watch."

Dalton fathers were attracted to him. Punch Sulzberger, the publisher of the New York Times, and a Dalton father at the time, tried to recruit Epstein to come to the Times. (Epstein recounts a story of riding with Sulzberger in his wood paneled station wagon to the family's country estate and Sulzberger talking to the chauffer on a phone from the backseat to the front.)

In 1976, another Dalton father, asking "wouldn't you rather be rich than be a teacher?" introduced him to Bear Stern's chief Ace Greenberg, a conversation Epstein recounts as this:

Greenberg: "Everyone tells me you're super smart in math and you're Jewish and you're hungry…so why don't you start working here tomorrow?"

Epstein: "What?"

Greenberg: "If your supposed to be so fucking smart, don't you understand English?"

Epstein: "Ok. Count me in."

Hence, Epstein, like many in the late 70s, arrived on Wall Street.

As will happen to a generation of others, by the fortuitous luck of being on Wall Street at that point in time, Epstein is transformed by a new, much faster, form of upward mobility than has ever before existed. With a facility for mathematics as well as for getting along with rich men, he transforms at an even faster rate than so many others who are also being quickly transformed.

He moves into the penthouse of a new building at 66th Street and Second Avenue—still in the shadow of the Maxwell Plum era when the 60s on Second was the glamour address—a building that was he says, as a fond memory, full of "actresses, models, and euro trash." (It would shortly become the Studio 54 era, where Epstein, who has never had drink or taken any drugs, was a regular).

If on one side of Wall Street there were the salesmen (the Wolf of Wall Street model), on the other side there was a new sort of finance type able to embrace a level of acute abstraction.

"In the past," says Epstein, "investing was all about reputations and relationships. You invested in a company on the basis of who was running it. Did they have integrity? Were they married? Good family men? It was a 50's mentality. But in the mid 70s options started to be traded. In essence, the first formal derivatives. The movement of this instrument is not directly attached to the stock price. The world of investing began turning from relationships to math. In a sense I didn't really make money as much as I tried to create it. This was intellectual activity of a fairly high order."

Intellectual activity aside, he meets Helen Gurley Brown and she makes him Cosmopolitan Magazine's Bachelor of the Month in 1980.

"What," I ask, "was your social life like?"

"Well, I was a playboy."

"That's all? Not looking to get married?"

"No. Never. I never wanted to get married. I enjoyed sex. I adore women. I wanted freedom. I was attracted to the rich because of their freedom. But I wanted also to avoid their burdens. And I didn't want to hide. I didn't want to be a hypocrite. I wanted to be free. I was not remotely ambivalent about what I wanted: to be free. That was the reason to make money."

His rise at Bear Sterns was a steep one. And he soon became the protégée of Jimmy Cayne (also hired by Ace Greenberg on a whim—he met him in a bridge game—who would go on to run Bear and to lose his fortune in Bear's 2006 collapse). Epstein's leave taking or ouster from Bear is the result of politics, envy, overreaching, or a securities violation, or…unclear. But, no matter, he leaves in 1982 with billionaire clients, including Marvin Davis, a real estate developer who owns Twentieth Century Fox, and Herb Seigel, a major media investor in the 1980s. Epstein is dating Morgan Fairchild, a television star in the new mega-rich-family soap operas, Dallas and Falcon Crest (plot lines from which Epstein might easily step).

Now begins the Concorde phase of his life—and the Concorde phase of the 1980s. If the 80s are happening pell mell in New York, they're happening at double time and catch up speed in London. Epstein is 30 years old and living, in Lifestyle of the Rich and Famous fashion (he befriends the show's star, Robin Leach), at English shooting parties at country estates with

Saturday night black tie dinners, where he's meeting the over-the-top families of Europe.

"I didn't take it seriously," Epstein recounts. "I was not caught up in it. I wasn't trying to make a billion dollars. There was no ultimate goal. It was just fun to meet smart people, interesting people. But no long-range plans. Often no short-term plans either. I would head to Kennedy and, on the theory that most important events in one's life are serendipitous, I wouldn't decide where I was going until I got there."

At the same time, he is developing a perception, or, at least a market differentiation: the hyper wealthy had different problems than the very wealthy. Dealing with a billion dollars was different from dealing with $100 million:

"If you had a billion dollars I would think the last thing you should be worried about was money, in truth money was what you most worried about. How to make more of it, how to give away more of it, how to protect you children from it, how to hide it from your wife or husband, how to minimize your taxes on it. The traditional wealth service structure, an accountant, and investment advisor, a personal lawyer, and an idiot brother-in-law, became hopelessly outdated as amounts exponentially increased.

"You can't spend a billion dollars, you can just reallocate it to a different investment class. And you can't give away a billion dollars without a vast staff, in effect going into the business of giving away money, yet another business you are likely to know little about."

At just about this point in the narrative, the questions or the incredulity begins in social circles and eventually in the media. He begins to acquire the major symbols of riches but does this without position, public holdings, or obvious paper trails. How can a person have enough money to merit increasing attention, but no clear way of having gotten it? Epstein gets stuck in that tautology. He may be rich, but he is without institutional protection or bona fides. He is a questionable substrata of wealth. He's a freelancer.

That's the rub: he doesn't work for anyone. Without institutional credentials he's…well, nobody knows what.

For a period, one part of his activities he says is recovering monies for countries looted by exiled dictators or military strongmen. If early in his career he might seem like a sort of George Peppard (there's a physical resemblance) in Breakfast at Tiffany's, a charming hustler, later he's George Peppard in Banacek, a smart and astute operator.

Then, in his telling, he's representing a series of vastly wealthy people and families. He's not just doing their bidding or their investing, he's helping them to navigate the ambitions of their wealth. They've satisfied their business dreams. Now there are the separate challenges and possibilities of their actual wealth. If they had big dreams before, it's nothing to what they can have now.

In essence, as Epstein becomes more of a public figure the response to this description of his livelihood, is, in the media and in high social circles, "bullshit." True, there is no clear alternate narrative. No one is accusing him of anything, accept, sometimes, guilt by association. (In addition to Robert Maxwell, who will be accused of fraud, there's Steven Hoffenberg, briefly a New York high flyer, who went to jail for a Ponzi scheme, for whom Epstein acted as a consultant—along with, he points out, Paul Volcker.) But the characterization persist: if it's not clear, it must be murky. Sure, Goldman Sachs partners and tech geniuses, they might have stratospheric wealth, but what to make of a Coney Island, Zelig-like no-namer?

In 1994, just at the moment when Prince Charles is on television acknowledging his love for Camilla Parker Bowles, Jeffrey Epstein is sitting with his arm around Princess Diana at a dinner at the Serpentine Galley in London (Diana is wearing her "revenge" dress that evening). Graydon Carter, into his second years as editor of Vanity Fair, is also at the dinner. Epstein's rise and Carter's rise are not, with a little critical interpretation, that different. Both are a function of the age of new money, both are helped by strategic relationships with the exceptionally wealthy (i.e. they are social climbers), both men have made themselves up. To say that Epstein, in the company of the Princess, sticks in Carter's craw would be a big understatement. Epstein becomes one of the "what do you know about him" figures in Carter's gossip trail—a story waiting to happen. A variety of the gossip that begins to circulate about Epstein—for instance, that he secretly films his guests—is seeded by Carter, who once advised me not to go to Epstein's house or accept a ride in his car least I risk being blackmail. ("For what?" I asked Carter. "You can't even begin to imagine," said Carter.)

Epstein is playing a cat and mouse game with his own growing wealth and influence. He is private and secretive, but grandly so. He joins the board of Rockefeller University. He's suddenly on the Trilateral commission, that cabal of business people who fancy themselves, and who are fancied by conspiracy buffs, as running the world. He buys from his client Limited Founder Les Wexner the larges private house in Manhattan. (Rumors will continue for many years, that Wexner owns the house and Epstein is just squatting in it—an 18-year squat.) He buys an airplane. He buys another. He expands his holdings in New Mexico. He begins a Zanadu refurbishment of his Caribbean Island.

He befriends Bill Clinton in his new after-office life.

And that's quite the fatal pairing.

The post-Monica Clinton, now having pardoned the on-the-lam financier Marc Rich—at this point, before his own rehabilitation, Clinton really is the world's ultimate sleaze ball—is suddenly being ferried around in the jet of…*who* exactly?

The New York Post is the first to take formal media note of the Clinton-Epstein connection, hinting at a sex and money bromance. ("I suppose travel with Clinton changed the arc of my life," Epstein tells me. "There were, I knew, lots of obvious reasons not to do it, but having the ability to spend 100 hours with a former president just doesn't happen to many people.")

The instinctively private Epstein is not just increasingly exposed, but clearly curious about the nature of exposure.

I met Epstein around this time. Epstein had become a more and more active backer of advanced scientific research and in 2002 he was taking a small group of scientists out to the TED conference in Monterey. The TED organizers invited various other TED participants, including me, to join the flight. A small group assembled at the private plane terminal, most of us unfamiliar with our benefactor, and as we headed in the direction of the discrete private plans we were gently pointed to our ride: Epstein's 727.

It is some thoroughly updated drawing room set-up, all of us nervously ensconced in this luxury plane, waiting for our unknown host to arrive—and soon he does, tanned, relaxed, with wide open smile, accompanied by three young women.

It would be unlikely, outside of a men's magazine fantasy of the luxe life, that you could locate this in reality. Epstein's attentions, taking time with each of his passengers, seemed impossible to account for. The quiet of the plane, engineered into acoustic perfection, seemed spooky. Epstein's three companions were witty, poised, helpful as well as powerfully alluring—as though stewardesses of bygone times.

(One more thing about this trip: Google founders, Larry Page and Sergey Brin, with their company still in its infancy, came out to see the plane on the Monterey tarmac and, with a few other Googlers, literally ran whopping from one end of the plan to the other. Then they described for Epstein, in what I can not now remember as a put on or entrepreneurial brainstorm, a brand extension in which they would market a line of Google bras with the Os as convenient cups. In fact, the name Google, they said, was invented out of the belief that men would focus on a word with two Os in it.)

Not long after this trip, Epstein's assistant called to invite me for tea at his house in New York, where Epstein, with what seemed to me little understanding of the subject, began to ask me about media—the upside, downside, and nature of media coverage. New York magazine was then soliciting him for a profile, as was Vanity Fair, who had assigned the British tabloid reporter, Vicki Ward, to the job.

Both profiles—New York's by Landon Thomas—pivot on the Clinton connection and detail the same quandary, how a man without clear institutional bona fides nevertheless achieves wealth and influence. Ward—who would more recently assert in the Daily Beast, that she was barred by Vanity Fair from writing about under-age sex evidence (a fact that could be read the other way: Vanity Fair, even looking to take down Epstein, did not find the evidence credible or supportable)—follows a rabbit hole of questionable contacts who might or might not have been the source or sources for Epstein's wealth, but gets no closer to an answer, beyond confirming her own sense of dubiousness.

Epstein, sensing that he might be exposing himself, tried to stop the process (Ward, often operatic about her journalistic exploits, says he threatened her), called Carter and said he was having second thoughts about being a public figure.

"Then you should live in a two bedroom apartment in Queens," responded Carter.

And then the troubles began.

Epstein, in man-who-can-have-everything fashion, and without the remotest sense of observance or propriety—as though a kind of cultural autism—has, for many years, ordered up a daily massage following his workout sessions.

"Often these were massage massages," says Epstein matter of factly, "but sometimes these were happy ending massages, especially in Palm Beach, where there are many massage parlors—'Jack Shacks,' they're called—that do outcalls. There was no sex. An often there was no happy ending. Often I would be on the phone for the entire massage. There were however a lot of massages and a lot of girls, with one girl recommending others."

It is after Epstein's round of publicity and widely touted association with Clinton, that the stepmother of one of the massage parlor girls, identified as "SG" in court documents, who went to Epstein's house (most of the girls return to Epstein's house many times) calls the police. The police interview the girl who then supplies names of other girls. Some of whom are younger than 18.

In the end, the police track down 18 girls—nine who are under 18; the others in their 20s and 30s; one woman is in her 60s—a number of whom give statements describing scenarios not terribly different from Epstein's description above, except each is laid out in clinical, lurid, and near-identical detail. A cold and forceful Epstein demands that unwitting juveniles (though they have come here for this very purpose) perform repulsive (or at least repulsively described) acts on him. (Although the nature of the allegations will dramatically grow into threesomes and forced sexual encounters, nobody at this point alleges anything more than Epstein masturbating.)

Epstein vastly raises the stakes by calling Dershowitz, who flies into Palm Beach to put the local authorities in their place—alienating Palm Beach officialdom—and, doubling down on the profile of the case, brings in Roy Black the famous criminal attorney who defended William Kennedy Smith in his rape trial in Palm Beach.

Here's the narrative: the shadowy rich man, friend of the louche and disgraced President, at all times surrounded by a retinue of young and gorgeous female retainers doing his bidding, is now found to have gathered a network of wrong-side-of-the-tracks Palm Beach girls to provide him with weird sexual services. (It somehow reads weirder that he doesn't have sex with them.) To boot, his former girl friend, Ghislaine Maxwell—the daughter of the disgraced Robert Maxwell—encouraged at least one of the girls to come to Epstein's home (and forever more has become a fixture of further weird possibilities in this tale).

Palm Beach Police Chief Michael Reiter is reported to say: "This is bigger than Rush Limbaugh," who, in a storm of publicity, has just been arrested in Palm Beach for possession of controlled drugs.

On one side are some of the nation's most powerful defense attorneys (who, increasingly, seem more stumblebum than effective), on the other side, a round-up of hapless girls, with sensational tales of perversion and infamy (in the telling they are not so much sex workers, as Dickensian victims), relatively speaking giving the Palm Beach authorities the choice between utter capitulation to the powerful or standing on the side of the seemingly exploited and powerless.

Still, with a cold eye, it also quite appears to be a straightforward tale of prostitution (however more or less kinky). And even though some of the girls are minors, age is not a distinguishing factor in a solicitation charge in Florida, nor in most places (in New York, for instance, at this time soliciting sex with anyone over the age of 14 is a class D misdemeanor calling for a $100 fine—the law has recently been changed to TK).

In fact, the "SG" tells the police that she lied about being 18 because otherwise she knew she would not have been admitted to the house (other girls will say they knew this is what they had to say, nevertheless not stopping them from saying it).

The local sex crimes prosecutor, Lana Belhalevic, interviews all the girls and determines that the offense is solely related to prostitution—that there are no real victims here.

Dershowitz, with chest pounding bravado, rejects a series of lower-level plea deals and Palm Beach District Attorney Barry Krischer takes the unusual step of empanelling a grand jury, which returns with a recommendation of a single count of soliciting a prostitute—a charge without jail time. (And Epstein can apply to have his record expunged after a year.)

At which point, Reiter, the police chief, at odds with the District Attorney's office, recruits the involvement of the FBI. This is of course the Bush-era FBI and Epstein presents quite the Clinton-connected scandal. Still, solicitation, even of a minor, is not a federal crime. The FBI hits on the novel interpretation that if Internet solicitation can be considered interstate commerce, so can telephone solicitation, permitting them to begin a deep dive investigation into Epstein's friends, many of whom receive subpoenas and are threatened with prosecution.

It's all quite in the eye of the beholder: On the one end, Epstein is paying for sex acts (Epstein paid $200 for a massage with or without happy ending), on the other, he is abusing teenage girls. It's a catch-22: How can a girl not old enough to vote be a prostitute? And yet, many girls not old enough to vote *are* prostitutes.

Compounding Epstein's predicament, the world outside of his carefully constructed and controlled environment is someplace that he seems not just ill-equipped to handle but in which he seems to be blindly grouping about (i.e. he's totally tone deaf). I visited him once during this time and found him weighing the conflicting advice of some of the most vaunted and egomaniacal lawyers (along with Dershowitz and Black, celebrity criminal attorney, Gerald Lefcourt, and Clinton prosecutor, Ken Starr) of the day—anyone with new advice, Epstein seemed to hire—as well as a catchall of the leading crisis managers, who he seemed to retain at will, all wrangling for fees and primacy.

Certainly, the upshot of his dealings with the Justice Department seem to involve a through-the-looking-glass logic. The government threatens to prosecute him (with the possibility of a 10-year sentence) and various friends, associates, and lovers, or offers what seems to be unprecedented deal in which Epstein's lawyers (not federal prosecutors, but Epstein's lawyers, in some ultimate act of self incrimination) have to go to the Palm Beach authorities and convince them to up the charges to an offense that will send him to jail and get him a sex offender status. Except that a solicitation charge won't produce that result. Therefore he has to agree to a procurement or pimping charge (even though he has paid money, not received it—the sine qua non of pimping). What's more, in a unique, if not unprecedented arrangement, he has to agree to pay the legal fees of any of the girls who want to sue him—and, not to defend himself from their suits—forcing him to settle with each of the girls for what are reportedly high 6-figure sums or more.

He's sentence to jail in 2008 for 18 months and serves 13 (while Epstein is now frequently accused of somehow managing to cut short his sentence, almost all Florida prisoners serve only 70% of their officially sentenced time).

Jail hardly ends the legal catch all. Epstein's butler, Alfredo Rodriguez, steals and tries to sell an alleged journal or calendar with Epstein's activities—but he tries to sell it to an undercover agent. Rodriguez is sentenced to 18 months in jail on a charge of theft and of withholding evidence (it is not so much a journal as a list of phone numbers, which were apparently collected or saved by Rod Rodriguez; all of this material was subsequently included in a court filing by Edwards). Scott Rothstein, a lawyer whose firm represented additional girls in their suits against Epstein, also goes to jail for recruiting investors to pay for these suits on the fraudulent basis that settlements had already been reached. It's the largest fraud in Florida history and Rothstein receives a 50-year sentence.

Then, Brad Edwards, Rothstein's former partner, sues the federal government in 2008 for abridging the rights of two of the original complainants under the Crime Victim Rights Act (giving victims the right to be consulted about the disposition of their cases) regarding the Justice Departments agreement not to prosecute in favor of the state action. In 2014, Edwards tries to ad Virginia Roberts, another of the original complainants, who has previously settled with Epstein, to the long-running suit. Roberts who was paid a settlement under the original terms of Epstein's agreement—that he would pay attorney's fees and not oppose any law suits against him—is now trying to overturn the agreement under which she was paid, and, with Edwards, further suing Epstein for $50,000,000.

Indeed, Roberts, with the Daily Mail being her prime outlet, emerges as the most vocal accuser—and, in fact, the some total of the current story and attention.

That is, there is no story without her and what is being billed as her memoir of her "sex slavery" with Epstein, written ten years after the fact. Along with the Dershowitz and Prince Andrew charges, Roberts puts, with rather some narrative detail, both Clinton and Al and Tipper Gore on the island—and in fact Clinton, apparently with the acquiescence of the Secret Service, flying in a helicopter piloted by Epstein's girlfriend, an amateur pilot. Epstein's lawyers say that not only have Clinton and the Gores never been to the Epstein Island, but that there is easy proof of this in secret service records, which would seem to make the memoir opportunistic or hallucinatory fiction.

The FBI, in a recent filing, has argued that Roberts should not be party to the suit against the government because she refused to cooperate with the government in its investigation in 2007, hence has no standing as a victim. (At the same time, the FBI included her on the list of 40 victims with whom it mandated Epstein reach a settlement.)

It is hard to find a more hyperbolic intersection of media and lawyers then in Epstein's case.

Edwards, over the six years of his law suit, tries to depose Clinton, Donald Trump, and Dershowitz—almost all of his targets coming directly from the original Vanity Fair and New York Magazine articles about Epstein.

In addition to Prince Andrew as a British hot button, first connected to Epstein through Roberts' interview with the Daily Mail in 2010, Clinton takes on a new role as Hillary spoiler through his connection, real or imagined, to Epstein and sex slaves.

Almost everybody identified in any story about Epstein is approached by other media seeking to write about Epstein, often with financial incentives.

No new stories or even new details emerge. Every aspect of the current story is based on court filings describing events that may or may not have taken place prior to 2007. It's as though a kind of ground-hog day of moral opprobrium, a desire to repeat and to savor a new the old details.

A recent Reuters story identified a charity that Epstein has not given money to in 15 years that said if he does give again, they would give it back.

The world cleanly divides, with Epstein (and friends) behind secure walls and the Mail and social media and upholders of new norms ever more incredulous and apoplectic that Epstein not only walks free but prospers too.

Although he has spent more than a year in jail and paid out what may be as much as $20 million, he yet seems somehow to have gotten away with it—that worst sin of all. He is the unrepentant catch all of up-to-the-minute badness: the financier whose wealth is a product of Wall Street math rather than work; a rich middle-age white man who not only parades his wealth and entitlement, but has a Peter Pan complex to boot; an insistent Playboy in a correct and prudish world—someone who somehow didn't get the memo about vast changes in mores and culture.

When I suggested recently that one obvious way to blunt the animus would be to get married, he said he'd rather go back to jail.

He is Calvin Harris's song, It Was Acceptable in the 80s, come to life.

This is all, of course, a Gatsby-like tale: An enigmatic, and strangely appealing figure, able to invent and inhabit his own world is a mystery to try to decipher. Of course Gatsby in New York Post and Daily Mail parlance would likely be just a freaky financier too.

And this story is, in its way, about the limitation of journalism, in which the most compelling parts of the tale—Epstein's ambitions and impulses would be well suited to a long running cable drama—need to be sacrificed not just to moral certainty but to a rather preposterous fantasy of moral certainty.

Anyway, I hope I get invited back to Jeffrey's house soon.

From: Martin Weinberg [[redacted]]
Sent: 4/22/2015 7:03:52 PM
To: Jeffrey Epstein [jeevacation@gmail.com]; Kathy Ruemmler [redacted]]
CC: Martin Weinberg [[redacted]]
Subject: ATTORNEY-CLIENT PRIVILEGE

Importance: High

As just received.
Martin G. Weinberg, Esq.

20 Park Plaza, Suite 1000

Boston, MA 02116

[redacted]

[redacted] cell

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--- On Wed, 4/22/15, Hill, James E. <[redacted]> wrote:

```
> From: Hill, James E. [redacted]>
> Subject: FW: inquiry from ABC News re Jeffrey Epstein
> To: '[redacted]
> Date: Wednesday, April 22, 2015, 1:57 PM
> #yiv0232406113
> #yiv0232406113 --
>
>  _filtered #yiv0232406113 {font-family:Wingdings;panose-1:5
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>  _filtered #yiv0232406113 {font-family:Calibri;panose-1:2 15
> 5 2 2 2 4 3 2 4;}
> #yiv0232406113
> #yiv0232406113 p.yiv0232406113MsoNormal, #yiv0232406113
> li.yiv0232406113MsoNormal, #yiv0232406113
> div.yiv0232406113MsoNormal
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> #yiv0232406113 a:link, #yiv0232406113
> span.yiv0232406113MsoHyperlink
>      {color:blue;text-decoration:underline;}
> #yiv0232406113 a:visited, #yiv0232406113
> span.yiv0232406113MsoHyperlinkFollowed
>      {color:purple;text-decoration:underline;}
> #yiv0232406113 p.yiv0232406113MsoPlainText, #yiv0232406113
> li.yiv0232406113MsoPlainText, #yiv0232406113
> div.yiv0232406113MsoPlainText
>      {margin:0in;margin-bottom:.0001pt;font-size:11.0pt;}
> #yiv0232406113 span.yiv0232406113PlainTextChar
>      {}
> #yiv0232406113 .yiv0232406113MsoChpDefault
>      {}
>  _filtered #yiv0232406113 {margin:1.0in 1.0in 1.0in 1.0in;}
> #yiv0232406113 div.yiv0232406113WordSection1
>      {}
> #yiv0232406113
>  _filtered #yiv0232406113 {}
>  _filtered #yiv0232406113 {font-family:Symbol;}
>  _filtered #yiv0232406113 {}
>  _filtered #yiv0232406113 {font-family:Wingdings;}
>  _filtered #yiv0232406113 {font-family:Symbol;}
>  _filtered #yiv0232406113 {}
>  _filtered #yiv0232406113 {font-family:Wingdings;}
>  _filtered #yiv0232406113 {font-family:Symbol;}
>  _filtered #yiv0232406113 {}
>  _filtered #yiv0232406113 {font-family:Wingdings;}
> #yiv0232406113 ol
>      {margin-bottom:0in;}
> #yiv0232406113 ul
>      {margin-bottom:0in;}
> #yiv0232406113 Marty:     With the understanding
> that we have not yet made determinations about what will or
> will not be included in our broadcast, here are the  bullet
> points of the principal allegations Ms. [redacted]
> raised in the ABC interview regarding Mr. Epstein.   I'm
> available on cell [redacted] if you wish to discuss.
> We'd ask for your response as soon as possible - best if
> by close of business Friday.   Thanks.   And I'm
> always available to talk to you if you wish to communicate
> with us.    ·
> She says in summer of 1999 when she was
> 15 - Ghislaine Maxwell approached and asked her if she was
> interested in a job as a masseuse·
> She says she was later (that same day)
> driven by her father to Epstein's Palm Beach residence,
> where she massaged Epstein with Maxwell's guidance, and
> then she says she was made to have sex, to include
> intercourse, with Epstein.   At conclusion she says she
> was paid $200 and driven home by a butler.·
> She says she quit her job and went to
> work for Epstein within a couple of weeks of the first
> encounter·
> She says Epstein always knew how old
> she was and says specifically that she, Epstein and Maxwell
> celebrated [redacted] 16th b-day together·
> She says Epstein paid her for the
> encounters and for her apartment and car·
> She says she would be expected to have
> sexual relations with Epstein up to several times a
> day·
> She says there was an uncountable
> number of other girls in similar situation to her, some as
> young as 12·
> She says she was given money by Epstein
> to go out and recruit other young girls for him.·
> She says that while she was free to
> come and go - she felt like she was under his control and
> she didn't want to disappoint Epstein.·
> She says Epstein required her, and paid
> her, to have sex with many of his friends. ·
> She says these people included
> politicians, royalty, educators·
> She says she had sex -or sexual
> activities - with Prince Andrew on three occasions - at
> the instruction of Epstein ·
> She says Epstein paid her $15,000 after
> the 1st of the three alleged encounters with
> Prince Andrew·
> She says that Epstein showed her a
> video room in his NY home which had monitors showing cameras
> in many locations in the home·
> She suggests Epstein made videos of
> underage girls with other people for purposes of potential
```

> blackmail ·
> She says that Epstein liked her to
> dress up in outfits, including bondage and schoolgirl
> outfits·
> She says she met Bill Clinton on
> Epstein's island in the USVI. She does not specify a
> date but says she is 100% sure it was Clinton and it was on
> the island. She says she ate dinner with Epstein and
> Clinton but alleges nothing further regarding Clinton.·
> She says one person – who she
> wouldn't name – that Epstein loaned her out to –
> physically assaulted and raped her. She says this
> happened on Epstein's island, and that she had been sent
> by Epstein – alone -to meet this person . She says she
> screamed but no one came to her aid. She says she feared
> for her life. She says she told Epstein about the
> alleged beating and rape afterwards and she said he didn't
> care.·
> She says Epstein and Maxwell asked her
> to have a child for them and to sign a document signing away
> the rights to the child in the event that she and Epstein
> had a falling out. She says she refused this
> request.·
> She says Epstein has a sick problem, is
> a pedophile, a dangerous man who should not be walking
> free -----Original
> Message-----
> From: Martin Weinberg
> [redacted]
> Sent: Wednesday,
> April 22, 2015 1:44 PM
> To: Hill, James E.
> Cc: Martin Weinberg
> Subject:
> Re: inquiry from ABC News re Jeffrey Epstein James, just confirming
> that you are sending me the bulletpoints from the interview
> you are asking about, thanksMartyMartin G. Weinberg,
> Esq. 20 Park Plaza, Suite
> 1000 Boston, MA 02116 [redacted] [redacted] cell =================================== This
Electronic Message
> contains information from the Law
> Office of Martin G. Weinberg, P.C.,
> and may be privileged. The
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> for the use of the addressee only.
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> disclosure, copying, distribution, or use of
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> is prohibited ---On Tue, 4/21/15, Hill,
> James E. <[redacted]>
> wrote: Subject: inquiry from ABC
> News re Jeffrey Epstein To: "[redacted]"
>[redacted]
>
> [redacted],
>
> [redacted]> Date: Tuesday, April 21,
> 2015, 4:36 PM
> Greetings.
> This is James Hill
> of ABC News. I write to you regarding Jeffrey Epstein – and
> your representation of him in the CVRA case in which he
> is an intervener. ABC News has recently conducted an on-camera
> interview with [redacted] (formerly known as Jane
> Doe #3), portions of which are very likely to be airing on
> Good Morning America and other ABC programs this week. We would like to offer you an opportunity
> to respond to the allegations she has raised about Mr.
> Epstein. Can you tell me who among you I should be in contact
> with? Should you wish to make a statement or respond in
> any other manner - I will need it by close-of-business
> Wednesday. Thanks kindly,James Hill James
> HillABC News Producer190 N. State St.Chicago IL
> 6060[redacted] (cell)[redacted] (cell)[redacted]
> (ofc)[redacted]
>

From: [redacted] <[redacted]>
Sent: Tuesday, January 19, 2016 11:39 PM
To: Jeffrey Epstein
Subject: Help!

Importance: High

Because you were not available to meet me in person last year and at this point I don't need to be seen. I can not have press, media, private investigators, film companies, etc. contacting me or my parents and sisters at home or on cell/texts and or by mail. I realize you don't have much control over this, but you can at least help me to move. I can't just get up and go like you. I left the city to escape, make a better life and I am devastated these people found me and brought to light an association of that I would rather them never to know. People think I was involved with something really bad and I lost a boyfriend of great potential over this shit. I am still in debt over all these years, been working my ass off trying to get ahead, which you could never understand I was even surviving off the pay I was getting. Well, its not any better. I dropped out of college because of you (and GM's) advice. Started working for a company you wanted me to and basically my life has has become hell since then.

I have been your supporter for 16 years, the media explosion with Clinton, Trump and Cosby is affecting me. I'm not prepared for this.

--

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From: [redacted]
Sent: Wednesday, January 20, 2016 3:46 AM
To: jeffrey E.
Subject: Help!

Importance: High

Appreciate what? I'm not sure you do. Be back for what? Where? I don't need to be photographed. I am trying to avoid that, hence the reason why I moved out here. I don't need people coming here looking for me to give them information about you or the "people" I was documented with... It's not my property. I don't think you get it.

On Tuesday, January 19, 2016, jeffrey E. <jeevacation@gmail.com> wrote:

> i appreciate it. I should be back feb 14,
>
> On Tue, Jan 19, 2016 at 6:39 PM, [redacted] wrote:
>
>> Because you were not available to meet me in person last year and at this point I don't need to be seen. I can not have press, media, private investigators, film companies, etc. contacting me or my parents and sisters at home or on cell/texts and or by mail. I realize you don't have much control over this, but you can at least help me to move. I can't just get up and go like you. I left the city to escape, make a better life and I am devastated these people found me and brought to light an association of that I would rather them never to know. People think I was involved with something really bad and I lost a boyfriend of great potential over this shit. I am still in debt over all these years, been working my ass off trying to get ahead, which you could never understand I was even surviving off the pay I was getting. Well, its not any better. I dropped out of college because of you (and GM's) advice. Started working for a company you wanted me to and basically my life has has become hell since then.
>>
>> I have been your supporter for 16 years, the media explosion with Clinton, Trump and Cosby is affecting me. I'm not prepared for this.
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From: [redacted]
Sent: Thursday, January 21, 2016 12:19 AM
To: jeffrey E.
Subject: Help!

Importance: High

Happy birthday, I remember the few I had spent with you, good memories!

The problem is that you may appreciate my support but that doesn't help me. Yes, I told you I can't have people coming here to ask about you and ex pals.... My landlord may shoot them. He is pissed. I need your help. Out of all the people you should be helping is someone who actually genuinely cared about you.i realize you're living the good life and I'm not your concern, but if you really appreciated my support then you'd help me otherwise I don't know what I'll do.

On Wednesday, January 20, 2016, jeffrey E. <jeevacation@gmail.com> wrote:

> i appreciate your support is what i meant. has anyting happened recently? it is my birthday today
>
> On Tue, Jan 19, 2016 at 10:46 PM, [redacted] [redacted] wrote:
>
> > Appreciate what? I'm not sure you do. Be back for what? Where? I don't need to be photographed. I am trying to avoid that, hence the reason why I moved out here. I don't need people coming here looking for me to give them information about you or the "people" I was documented with... It's not my property. I don't think you get it.
> >
> > On Tuesday, January 19, 2016, jeffrey E. <jeevacation@gmail.com> wrote:
> >
> > > i appreciate it. I should be back feb 14,
> > >
> > > On Tue, Jan 19, 2016 at 6:39 PM, [redacted]
> > >
> > > > Because you were not available to meet me in person last year and at this point I don't need to be seen. I can not have press, media, private investigators, film companies, etc. contacting me or my parents and sisters at home or on cell/texts and or by mail. I realize you don't have much control over this, but you can at least help me to move. I can't just get up and go like you. I left the city to escape, make a better life and I am devastated these people found me and brought to light an association of that I would rather them never to know. People think I was involved with something really bad and I lost a boyfriend of great potential over this shit. I am still in debt over all these years, been working my ass off trying to get ahead, which you could never understand I was even surviving off the pay I was getting. Well, its not any better. I dropped out of college because of you (and GM's) advice. Started working for a company you wanted me to and basically my life has has become hell since then.
> > > >
> > > > I have been your supporter for 16 years, the media explosion with Clinton, Trump and Cosby is affecting me. I'm not prepared for this.
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> > > > --
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From: [redacted]
Sent: Friday, January 22, 2016 2:28 PM
To: Jeffrey Epstein
Subject: Help!

Importance: High

Since I need and at this point want to move off this breathtaking property, I want to be able to buy a home in NJ, with $0 savings, = impossible. With salary and cost of living, I don't get ahead. Also my luck with men and relying on a man for support is the worst idea. Average homes in NJ are $400-$500K ugh I also still have to pay off student loan, ($9,809.74).

On Wednesday, January 20, 2016, jeffrey E. <jeevacation@gmail.com> wrote:

> what do you suggest?
>
> On Wed, Jan 20, 2016 at 7:19 PM, [redacted] wrote:
>
>> Happy birthday, I remember the few I had spent with you, good memories!
>>
>> The problem is that you may appreciate my support but that doesn't help me. Yes, I told you I can't have people coming here to ask about you and ex pals.... My landlord may shoot them. He is pissed. I need your help. Out of all the people you should be helping is someone who actually genuinely cared about you.i realize you're living the good life and I'm not your concern, but if you really appreciated my support then you'd help me otherwise I don't know what I'll do.
>>
>> On Wednesday, January 20, 2016, jeffrey E. <jeevacation@gmail.com> wrote:
>>
>>> i appreciate your support is what i meant. has anyting happened recently? it is my birthday today
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>>> On Tue, Jan 19, 2016 at 10:46 PM, [redacted] wrote:
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>>>> Appreciate what? I'm not sure you do. Be back for what? Where? I don't need to be photographed. I am trying to avoid that, hence the reason why I moved out here. I don't need people coming here looking for me to give them information about you or the "people" I was documented with... It's not my property. I don't think you get it.
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>>>> On Tuesday, January 19, 2016, jeffrey E. <jeevacation@gmail.com> wrote:
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>>>>> i appreciate it. I should be back feb 14,
>>>>>
>>>>> On Tue, Jan 19, 2016 at 6:39 PM, [redacted] wrote:
>>>>>
>>>>>> Because you were not available to meet me in person last year and at this point I don't need to be seen. I can not have press, media, private investigators, film companies, etc. contacting me or my parents and sisters at home or on cell/texts and or by mail. I realize you don't have much control over this, but you can at least help me to move. I can't just get up and go like you. I left the city to escape, make a better life and I am devastated these people found me and brought to light an association of that I would rather them never to know. People think I was involved with something really bad and I lost a boyfriend of great potential over this shit. I am still in debt over all these years, been working my ass off trying to get ahead, which you could never understand I was even surviving off the pay I was getting. Well, its not any better. I dropped out of college because of you (and GM's) advice. Started working for a company you wanted me to and basically my life has has become hell since then.

I have been your supporter for 16 years, the media explosion with Clinton, Trump and Cosby is affecting me. I'm not prepared for this.

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Date ~~19~~ 2002	Aircraft Make and Model	Aircraft Identification Mark	Points of Departure & Arrival From	To	Miles Flown	Flight No.	Remarks, Procedures, Maneuvers, Endorsements	Number of Landings	Aircraft Category... AIRPLANE	GLIDER	HELICOPTER
JAN 21	N908GM	C-421B	PBI	FXC			D.O. [redacted] BROTHERS AVIATION TO HAVE ENGINES SET UP	V/1	6		
MAY 11	N908JC	B-727-31	PBI	JFK		93	JG, [redacted]	V/1	2 5		
11	B-727-31	N908JC	JFK	LFPB		94	JG,GM, [redacted]	/1	7 2		
13	"	"	LFPB	LFPG		95	REPOSITION		5		
13	"	"	LFPG	EGGW		96	JG,GM [redacted]		8		
16	"	"	EGGW	LFMN		97	JG,GM, [redacted]	V/1	1 8		
19	"	"	LFMN	UNNT		98	JG,GM, [redacted]	V/	6 7		
20	"	"	UNNT	RJTA		99	JG,GM,S[redacted]	/1	6 5		
22	"	"	RJTA	VHHH		100	JG,GM, [redacted] PRESIDENT BILL CLINTON, MEXC, DOUG BANDS, [redacted] [redacted] RATHGEB +6PAX		4 0		
23	"	"	VHHH	ZGSZ		101	SAME AS ABOVE PETE RATHGEB		4		
23	"	"	ZGSZ	WSSS		102	SAME AS ABOVE PETE RATHGEB		3 4		
25	"	"	WSSS	VTBD		103	SAME AS ABOVE PETE RATHGEB		2 2		
25	"	"	VTBD	WBSB		104	SAME AS ABOVE PETE RATHGEB		2 6		
27	"	"	WBSB	WRRR		105	JG,GM, [redacted] PETE RATHGEB	V/1	2 1		
29	"	"	WRRR	VCBI		106	JG,GM, [redacted] PETE RATHGEB		5 2		
29	"	"	VCBI	OMDB		107	JG,GM, [redacted] PETE RATHGEB		4 4		
30	"	"	OMDB	LFPB		108	JG,GM, [redacted]C PETE RATHGEB		3 8		
31	"	"	LFPB	EGGW		109	JG,GM, [redacted] PETE RATHGEB	1/1	1 0		
JUN 7	"	"	EGGW	EIDW		110	REPOSITION		1 7		

I certify that the statements made by me on this form are true.

Pilot's Signature David Rodgers

	Number of Landings	AIRPLANE	GLIDER	HELICOPTER
Page Total	6/7	57 4		
Amount Forward	6532 4180	8635 1	3 5	112 6
Total to Date	6539 6187	8692 5	3 3	112 6

Date ~~19~~ 2002	Aircraft Make and Model	Aircraft Identification Mark	Points of Departure & Arrival From	To	Miles Flown	Flight No.	Remarks, Procedures, Maneuvers, Endorsements	Number of Landings	Aircraft Category... AIRPLANE		GLIDER		HELICOP	
FEB 18	B-727-31	N908JE	PBI	ABY		64	GM, [redacted], GLEN DUBIN, 2 FEMALES RICHARD COHN	V	1	3				
18	"	"	ABY	JFK		65	JE, GM, [redacted], GLEN DUBIN, 2 FEMALES RICHARD COHN		2	1				
20	"	"	JFK	MRY		66	JE, SK, [redacted] [redacted], KIT LAYBOURN, STEVEN PINKER, [redacted] + TIM ZAGAT,	1/1	5	9				
~~23~~	"	"	~~MRY~~	~~VNY~~		66	DAVID ROCKWELL, [redacted] JOHN BROCKMAN, [redacted] [redacted] MICHAEL WOLFF, DANIEL DENNETT, RICHARD RICHARD COOK							
23	"	"	MRY	VNY		67	JE, [redacted] [redacted] [redacted] [redacted] [redacted] [redacted] [redacted] 6 OTHER PASSENGERS [redacted] TIM ZAGAT,	1/1		8				
23	"	"	VNY	JAY		68	B CHECK FMS, ENROUTE RADIO PROCEDURES LARRY MORRISON SIL, ↑ ↓, LANDING	1/	4	2				
25	G-1159B	N908JE	~~TEB~~ PBI	~~ABQ~~ TEB		1561	ROGER, SLOANE + SPENCER BARNETTE, ARLENE (NANNY)	1/1	2	5				
25	"	"	TEB	ABQ		1562	GM	1/1	4	3				
28	B-727-31	N908JE	JAX	PBI		71	BCHECK	1/1	1	2				
MAR 6	B-727-200	SIMULATOR	MIA	MIA			STEEP TURNS, STALLS, HOLDING,		2	0				
7	"	"	"	"			EMERGENCY DESCENT, RTO, UNUSUAL ATTITUDES, ENGINE FAILURES, MISSED APPROACH		2	0				
7	"	"	"	"			EMERGENCY DESCENTS 2 ENGINES OUT, WINDSHEAR, HYDRAULIC FAILURES		2	0				
8	"	"	"	"			EMERGENCY DESCENT, HOLDING, ENGINE FIRE, WHEEL WELL FIRE		2	0				
10	B-727-31	N908JE	TIST	JFK		72	JE, GM, [redacted], AP, [redacted], 2 FEMALES	1/	4	1				
14	"	"	JFK	PBI		73	JE, [redacted], JOE PAGANO, [redacted], TODD		2	5				
17	"	"	PBI	JFK		74	JE, [redacted], JOE PAGANO, [redacted], TODD, 1 FEMALE	1/	2	6				
19	"	"	JFK	EGGW		75	BILL CLINTON, DOUG BAND, 3 SECRET SERVICE JE, GM, [redacted]	1/1	6	7				
21	"	"	EGGW	JFK		76	BILL CLINTON, DOUG BAND, 10 SECRET SERVICE JE, GM, [redacted], NAOMI CAMPBELL, 1 MALE SERVICE FOR LM		7	8				
22	"	"	JFK	PBI		77	JE, [redacted] [redacted]		2	6				

I certify that the statements made by me on this form are true.

Pilot's Signature David Rodgers

	Number of Landings	Airplane		Glider		Helicopter	
Page Total	~~85~~ 6	56	6				
Amount Forward	6517 6169	8541	9	3	3	112	6
Total to Date	6526 6175	8594	5	3	3	112	6

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Date 19__ 2002	Aircraft Make and Model	Aircraft Identification Mark	Points of Departure & Arrival		Miles Flown	Flight No	Remarks, Procedures, Maneuvers, Endorsements	Number of Landings	Aircraft Category...					
			From	To					AIRPLANE		GLIDER		HELI	
JUL 13	B-727-31H	N908JE	LFMN	GMTT		120	JE, GM, [redacted], AP, [redacted]		2	1				
13	"	"	GMTT	GMME		121	JE, GM, [redacted], AP			7				
13	"	"	GMME	LPAZ		122	JE, GM, [redacted], AP, [redacted], PRESIDENT CLINTON DOUG BAND, MIKE, 8 SECRET SERVICE		2	4				
13	"	"	LPAZ	JFK		123	JE, GM, [redacted], AP, [redacted], PRESIDENT BILL CLINTON, DOUG BAND, MIKE, 8 SECRET SERVICE		5	8				
18	"	"	JFK	PBI		124	JE, [redacted], 2 FEMALES		2	2				
19	"	"	PBI	JAX		125	[redacted], GREG HOLBURT, [redacted] [redacted] - C CHECK		1	0				
AUG 4	G-1159B	N909JE	PBI	MVY		1583	JE, 1 FEMALE		2	8				
4	"	"	MVY	BED		1584	JE, 1 FEMALE			7				
4	"	"	BED	TEB		1585	JE, 1 FEMALE			9				
5	"	"	TEB	SAF		1586	JE, [redacted], 2 FEMALES		3	9				
6	C-172XP	N739SP	ACG	ACG			172 CHECK OUT	1/1		9				
6	206L3	N474AW	ZORRO	ACG				3/3						
15	B-727-31H	N908JE	JAX	JAX		126	C-CHECK FLIGHT TEST PETE RATHGEB	1/1		9				
16	"	"	JAX	PBI		127	RETURN FROM C-CHECK PETE RATHGEB		1	1				
17	G-1159-B	N909JE	SAF	TEB		1589	JE, GM, [redacted], [redacted], [redacted], DAN MARON, COWARD, ALFRED, [redacted], NICK SIMMONS,		3	7				
18	"	"	TEB	PBI		1590	JE, [redacted], 1 FEMALE		2	4				
21	B-727-31H	N908JE	PBI	TEST		128	JE, [redacted]		2	5				
25	"	"	TEST	JFK		129	JE, [redacted]		3	6				
28	"	"	JFK	LFPB		130	JE, [redacted], [redacted], 1 FEMALE	1/1	6	4				
							Page Total	6/6	44	0				5
							Amount Forward	6547 6194	5710	1	3	3	112	6
							Total to Date	6553 6200	5754	1	3	3	113	1

I certify that the statements made by me on this form are true.

Pilot's Signature David Rodgers

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Date ~~19~~ 2002	Aircraft Make and Model	Aircraft Identification Mark	Points of Departure & Arrival: From	To	Miles Flown	Flight No.	Remarks, Procedures, Maneuvers, Endorsements	Number of Landings	Aircraft Category... AIRPLANE		GLIDER		HELICOPTER		
AUG 31	B 727-31H	N908JE	LFPB	EGBB		131	JE, [redacted]	1/1	1	0					
SEP 2	"	"	EGBB	LFPB		132	JE, [redacted]		1	0					
3	"	"	LFPB	JFK		133	JE, [redacted], [redacted], JEAN LUC BRUNEL	1/1	7	5					
4	"	"	JFK	PBI		134	JE, 1 FEMALE		2	5					
8	G-1159B	N909JE	PBI	TEB		1592	JE, [redacted], 2 FEMALES		2	7					
9	G-1159B	"	TEB	BED		1593	JE, [redacted]			9					
9	"	"	BED	TEB		1594	JE, [redacted]	1/1		9					
10	"	"	TEB	TIST		1545	JE, [redacted], [redacted] 1 MALE		3	8					
15	"	"	TIST	PBI		1546	JE, [redacted], [redacted]		2	6					
21	B 727-31H	N908JE	JFK	LPAZ		136	PRESIDENT WILLIAM J. CLINTON, KEVIN SPACEY, CHRIS TUCKER JE, GM,	1/1	5	2					
22	"	"	LPAZ	DGAA		137	SK, CL, [redacted] [redacted] DOUG BAND, DAVID SLANG, JIM KENNEDY	/0	5	7					
23	"	"	DGAA	DNAA		138	GREG NOVAKS, RODNEY SLATER, CASEY [illegible] WASSERMAN, RON BURKLE, [redacted]	/1	1	7					
24	"	"	DNAA	HRYR		139	SAME AS ABOVE LESS RON BURKLE	0/	4	0					
25	"	"	HRYR	FQMA		140	SAME AS ABOVE PLUS IRA MAGAZINER		3	8					
26	"	"	FQMA	FACT		141	SAME AS ABOVE		2	4					
27	"	"	FACT	FAJS		142	SAME AS ABOVE LESS, JE, GM, [redacted], [redacted] [redacted] [redacted] [redacted]	1/	2	1					
28	"	"	FAJS	FACT		143	SAME AS ABOVE LESS [redacted], IRA MAGAZINER		2	0					
29	"	"	FACT	DGAA		144	SAME AS ABOVE ADD, JE, GM, [redacted] [redacted] [redacted]		6	2					
29	"	"	DGAA	LFPB		145	SAME AS ABOVE	/1	6	5					
							Page Total	5/6	62	5					
							Amount Forward	6553 6200	8784	1	3	3	11	3	1
							Total to Date	6558 6266	8846	6	3	3	11	3	1

I certify that the statements made by me on this form are true.

Pilot's Signature David Rodgers

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Date 19— 2002	Aircraft Make and Model	Aircraft Identification Mark	Points of Departure & Arrival		Miles Flown	Flight No.	Remarks, Procedures, Maneuvers, Endorsements	Number of Landings	Aircraft Category...			
			From	To					AIRPLANE		GLIDER	HELI
29 OCT	B-727-31H	N908JE	LFPB	EGGW		146	SAME AS ABOVE LESS JE, SK, GD, LAURA + CASEY WASSERMAN			9		
1	"	"	EGGW	LFPB		147	GM, NICK + ROWENA SAMMONS	1/1	1	0		
2	"	"	LFPB	JFK		148	JE, GM, [redacted] [redacted] [redacted] [redacted], NAOMI CAMPBELL		8	1		
3	"	"	JFK	PBI		149	JE, SK, [redacted] [redacted] NICK SIMMONS; [illegible]		2	4		
6	G-1159B	N909JE	PBI	TEB		1597	JE, [redacted] [redacted], [illegible]		2	3		
11	"	"	TEB	PBI		1598	JE, GM, [redacted], RYAN, [illegible]		2	5		
14	"	"	PBI-OFF	-PBI		1599	MARK POTTER - PPC ILS SINGLE ENGINE + GO AROUND SE	1/		[illegible]		
15	"	"	PBI	TEB		1600	JE, GM, [redacted] [redacted], RYAN DIONNE	1/1	2	4		
17	"	"	TEB	TIST		1601	JE, SK, [redacted] [redacted]		3	7		
21	"	"	TIST	PBI		1602	JE, SK, [redacted] [redacted] [redacted] [redacted] [redacted]	1/1	2	6		
30	"	SIMULATOR	JFK	MIV			STEEP TURNS, STALLS, SLOW FLIGHT, [illegible] HOLDING		2	0		
30	"	"	MIV	JFK			SINGLE ENG APPROACH [illegible] EMERGENCY DESCENT, [illegible]		2	[illegible]		
31	"	"	SWF	JFK			[illegible], SINGLE ENGINE APPROACH [illegible] ENGINE FAILURE [illegible]		2	[illegible]		
NOV 3	"	N909JE	PBI	TIST		1603	JE, SK, [redacted] [redacted]	3/3	[illegible]	[illegible]		
6	B-727-200	SIMULATOR	MDP	MDP			[illegible] FAILURE [illegible] [illegible] EMERGENCY DESCENT SYS [illegible]	1/1	[illegible]	3		
6	"	"	MDP	MDP			[illegible] PRESSURE, [illegible] [illegible]		2	[illegible]		
10	G-1159B	N909JE	TIST	TEB		1604	JE, SK, [illegible]		2	0		
15	"	"	TEB	TIST		1605	[illegible] RYAN DIONNE, [illegible]	1/	4	3		
17	"	"	TIST	PBI		1606	[illegible]		2	6		
									—	6		
							Page Total	4/8	49	5		
							Amount Forward	6558 6266	8846	6	33	11
							Total to Date	6561 6214	8896	1	[illegible]	[illegible]

I certify that the statements made by me on this form are true

Pilot's Signature

Non-Responsive - Redacted

Non-Responsive - Redacted

Non-Responsive - Redacted

Non-Responsive - Redacted

From: [redacted]
Sent: Monday, February 15, 2016 3:25 PM
To: jeffrey E.
Subject: Help!

Importance: High

Still have Zorro ❤ pjs... Perfect for my lonely Valentine's Day. ☹

So, what do you think about my suggestion to help?

How are you holding up?

On Wednesday, January 20, 2016, jeffrey E. <jeevacation@gmail.com> wrote:

> what do you suggest?
>
> On Wed, Jan 20, 2016 at 7:19 PM, [redacted] wrote:
>
> > Happy birthday, I remember the few I had spent with you, good memories!
> >
> > The problem is that you may appreciate my support but that doesn't help me. Yes, I told you I can't have people coming here to ask about you and ex pals.... My landlord may shoot them. He is pissed. I need your help. Out of all the people you should be helping is someone who actually genuinely cared about you.i realize you're living the good life and I'm not your concern, but if you really appreciated my support then you'd help me otherwise I don't know what I'll do.
> >
> > On Wednesday, January 20, 2016, jeffrey E. <jeevacation@gmail.com> wrote:
> >
> > > i appreciate your support is what i meant. has anyting happened recently? it is my birthday today
> > >
> > > On Tue, Jan 19, 2016 at 10:46 PM, [redacted] wrote:
> > >
> > > > Appreciate what? I'm not sure you do. Be back for what? Where? I don't need to be photographed. I am trying to avoid that, hence the reason why I moved out here. I don't need people coming here looking for me to give them information about you or the "people" I was documented with... It's not my property. I don't think you get it.
> > > >
> > > > On Tuesday, January 19, 2016, jeffrey E. <jeevacation@gmail.com> wrote:
> > > >
> > > > > i appreciate it. I should be back feb 14,
> > > > >
> > > > > On Tue, Jan 19, 2016 at 6:39 PM, [redacted] wrote:
> > > > >
> > > > > > Because you were not available to meet me in person last year and at this point I don't need to be seen. I can not have press, media, private investigators, film companies, etc. contacting me or my parents and sisters at home or on cell/texts and or by mail. I realize you don't have much control over this, but you can at least help me to move. I can't just get up and go like you. I left the city to escape, make a better life and I am devastated these people found me and brought to light an association of that I would rather them never to know. People think I was involved with something really bad and I lost a boyfriend of great potential over this shit. I am still in debt over all these years, been working my ass off trying to get ahead, which you could never understand I was even surviving off the pay I was getting. Well, its not any better. I dropped out of college because of

you (and GM's) advice. Started working for a company you wanted me to and basically my life has has become hell since then.

I have been your supporter for 16 years, the media explosion with Clinton, Trump and Cosby is affecting me. I'm not prepared for this.

--
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From: Thomas Jr., Landon [[redacted]]
Sent: 11/7/2017 2:26:43 PM
To: jeffrey E. [jeevacation@gmail.com]
Subject: Re:

Importance: High

i am more interested in al-waleed/saudi purge/Jared axis. al-waleed and prez go back a ways don't they?

On Tue, Nov 7, 2017 at 5:42 AM, jeffrey E. <jeevacation@gmail.com> wrote:

> http://people.com/movies/harvey-weinstein-hired-intelligence-agencies-to-spy-on-accusers-rose-mcgowan/ the same boies that represents [redacted] who makes totally fabricated claims re gore and clinton - boies clients. he refuses to ask them their version of events. They were never on the island and though she gave details of a dinnner. I have never ever met al gore or his wife.
>
> boies is going to be in the firiing line. from the biz view he represented Hank Greenburg AIG, , his fees were never paid as the appeals court overturned the win. but AIG as an insurance co. -- ... phone only
>
> --
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--
Landon Thomas, Jr.
Financial Reporter
New York Times
[redacted]
[redacted]
http://topics.nytimes.com/top/reference/timestopics/people/t/landon_jr_thomas/index.html

From: Thomas Jr., Landon [[redacted]]
Sent: 11/7/2017 3:00:15 PM
To: jeffrey E. [jeevacation@gmail.com]
Subject: Re:

Importance: High

Did your Saudi friends survive the purge?

On Tue, Nov 7, 2017 at 9:55 AM, jeffrey E. <jeevacation@gmail.com> wrote:

> As they are both bulkshitters
>
> On Tue, Nov 7, 2017 at 10:26 AM Thomas Jr., Landon <[redacted]> wrote:
>
>> i am more interested in al-waleed/saudi purge/Jared axis. al-waleed and prez go back a ways don't they?
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>>
>> --
>> Landon Thomas, Jr.
>> Financial Reporter
>> New York Times
>> [redacted]

> http://topics.nytimes.com/top/reference/timestopics/people/t/landon_jr_thomas/index.html
>
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--
Landon Thomas, Jr.
Financial Reporter
New York Times
[redacted]
http://topics.nytimes.com/top/reference/timestopics/people/t/landon_jr_thomas/index.html

---

From: Thomas Jr., Landon [redacted]]
Sent: 11/8/2017 1:48:26 PM
To: jeffrey E. [jeevacation@gmail.com]
Subject: Re:

Importance: High

Re Boies, Voila. https://www.nytimes.com/2017/11/07/business/weinstein-lawyer-david-boies.html. Unclear to me why he is getting involved with you....

On Tue, Nov 7, 2017 at 10:10 AM, jeffrey E. <jeevacation@gmail.com> wrote:

> All. With gods help ;)
>
> On Tue, Nov 7, 2017 at 11:00 AM Thomas Jr., Landon <[redacted]> wrote:
>
> > Did your Saudi friends survive the purge?
> >
> > On Tue, Nov 7, 2017 at 9:55 AM, jeffrey E. <jeevacation@gmail.com> wrote:
> >
> > > As they are both bulkshitters
> > >
> > > On Tue, Nov 7, 2017 at 10:26 AM Thomas Jr., Landon <[redacted]> wrote:
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> > > > i am more interested in al-waleed/saudi purge/Jared axis. al-waleed and prez go back a ways don't they?
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> > > > > http://people.com/movies/harvey-weinstein-hired-intelligence-agencies-to-spy-on-accusers-rose-mcgowan/ the same boies that represents [redacted]. who makes totally fabricated claims re gore and clinton - boies clients. he refuses to ask them their version of events. They were never on the island and though she gave details of a dinnner. I have never ever met al gore or his wife.
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--
Landon Thomas, Jr.
Financial Reporter
New York Times
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http://topics.nytimes.com/top/reference/timestopics/people/t/landon_jr_thomas/index.html

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--
Landon Thomas, Jr.
Financial Reporter
New York Times
[redacted]
http://topics.nytimes.com/top/reference/timestopics/people/t/landon_jr_thomas/index.html

--

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--
Landon Thomas, Jr.
Financial Reporter
New York Times
[redacted]
[redacted]
http://topics.nytimes.com/top/reference/timestopics/people/t/landon_jr_thomas/index.html

Client Who Stood Up for Boies Goe Public in Sex Trafficking Case

After first outing herself to defend David Boies in a letter to The New York Times, Sarah Ransome is giv pseudonym "Jane Doe 43" in a sexual trafficking lawsuit against billionaire Jeffrey Epstein.

By **Miriam Rozen** | UPDATED Jan 09, 2018 at 12:21 PM | Originally published on **The American Lawyer**

David Boies, Boies Schiller Flexner
Diego M. Radzinschi/The National Law Journal

"Jane Doe 43" has formally identified herself as Sarah Ransome in a sexual trafficking **lawsuit** that her lawyers at **Boies Schiller Flexner** are pursuing against billionaire Jeffrey Epstein.

In a **notice to change the case caption** filed Friday in Manhattan federal court, Ransome's attorneys said she "no longer intends to proceed by way of pseudonym" in the case, which claims Epstein forced her to have sex for money.

Defense lawyers for Epstein had argued that Ransome must litigate under her own name after she wrote a Nov. 15 letter to The New York Times, which the Times **published**, in which she defended Boies Schiller and firm chairman David Boies against criticism stemming from Boies' work for Harvey Weinstein.

Ransome identified herself as Jane Doe 43 in the Times letter, which said Boies "heard me and came to my rescue" when others refused to take her allegations against Epstein seriously. "For the first time in 10 years I finally feel safe because of David Boies and his colleagues," wrote Ransome, who also said the firm did not charge her legal fees.

The letter was prompted by a Nov. 9 Times op-ed by Stanford University law professor Deborah Rhode, titled "**David Boies's Egregious Involvement With Harvey Weinstein**." Written in the wake of **revelations in The New Yorker** that Boies had engaged private investigators to kill an investigation by Times reporters into Weinstein's alleged sexual predations, the op-ed suggested that Boies' work for Weinstein was unethical, partly because the Times' was a Boies Schiller client.

Two days earlier, on Nov. 7, following publication of The New Yorker article, Boies had issued **a statement addressed** to his firm, stating that Weinstein was no longer a client and stressing that he "would never knowingly participate in an effort to intimidate or silence women or anyone else."

In a Nov. 21 brief in the Epstein litigation, defense lawyer Michael Miller of Steptoe & Johnson LLP argued that Ransome had never satisfied requirements to file anonymously and had publicly identified herself with her letter to the Times, so she should be required to add her name to the case caption.

Sigrid McCawley, a Boies Schiller partner in the firm's Fort Lauderdale office who represents Ransome along with Boies and others, said her client ultimately chose to go public with her name "in the hopes that her courage will inspire other Epstein victims to speak their truth."

In 2008, Epstein entered a guilty plea in Florida for soliciting an underage prostitute, which led to an 18-month jail term and placement on the national sex offender registry. Since then, multiple plaintiffs have filed related complaints against him, including **one that includes allegations** that President Donald Trump's winter White House, Mar-a-Lago, was the location of events that led to sex trafficking.

Epstein has argued that the court should dismiss the case because Ransome failed to state a substantiated claim and because the claims she makes are barred by the statute of limitations.

Steptoe's Miller had no immediate comment for this report.

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liriam Rozen

riam Rozen covers the business of law with a focus on law firm-client relationships. Contact her at rozen@alm.com. Twitter: @MiriamRozen.

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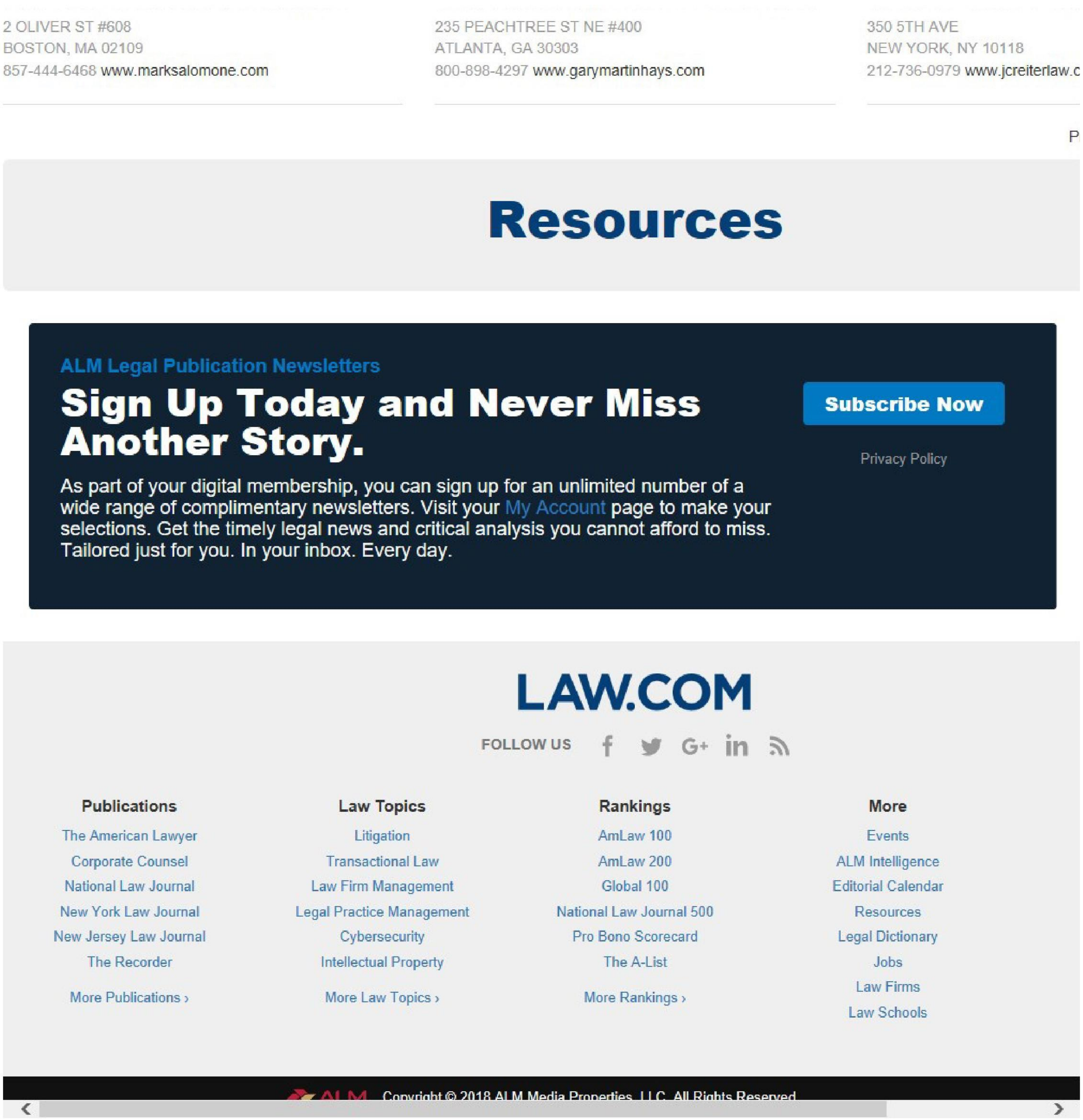

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From: Brad Edwards [redacted]
Sent: 4/6/2018 3:49:11 PM
To: jeevacation@gmail.com
Attachments: image001.png; clinton_9-2002.pdf; shoppers_travel_not_redacted.pdf

Importance: High

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I expect a crisp, new bill. Your personalized message can say whatever you would like but it should include, "you win!"

EDWARDS
POTTINGER LLC

Brad Edwards
Board Certified Trial Attorney
425 North Andrews Avenue, Suite 2
Fort Lauderdale, Florida 33301
[redacted]
[redacted] | www.epllc.com

Date ~~19~~ 2002	Aircraft Make and Model	Aircraft Identification Mark	Points of Departure & Arrival: From	To	Miles Flown	Flight No.	Remarks, Procedures, Maneuvers, Endorsements	Number of Landings	Aircraft Category... AIRPLANE		GLIDER		HELICO	
AUG 31	B-727-31H	N908JE	LFPB	EGBB		131	JE, [redacted]	1/1	1	0				
SEP 2	"	"	EGBB	LFPB		132	JE, [redacted]		1	0				
3	"	"	LFPB	JFK		133	JE, [redacted], [redacted], JEAN LUC BRUNEL	1/1	7	5				
4	"	"	JFK	PBI		134	JE, 1 FEMALE		2	5				
8	G-1159B	N909JE	PBI	TEB		1592	JE, [redacted], 2 FEMALES		2	7				
9	G-1159B	"	TEB	BED		1593	JE, [redacted]	1/1		9				
9	"	"	BED	TEB		1594	JE, [redacted]			9				
10	"	"	TEB	TIST		1545	JE, [redacted], [redacted], 1 MALE		3	8				
15	"	"	TIST	PBI		1846	JE, [redacted], [redacted]		2	6				
21	B-727-31H	N908JE	JFK	LPAZ		136	PRESIDENT WILLIAM J. CLINTON, [illegible] KEVIN SPACEY, CHRIS TUCKER, JE, GM,	1/1	5	2				
22	"	"	LPAZ	DGAA		137	[redacted], CL, [redacted] [redacted] DOUG BAND, DAVID SLANG, JIM KENNEDY,	/	5	7				
23	"	"	DGAA	DNAA		138	ERIC NONACS, RODNEY SLATER, CASEY + LAURIE WASSERMAN, RON BURKLE, [redacted]	/1	1	7				
24	"	"	DNAA	HRYR		139	SAME AS ABOVE LESS RON BURKLE	0/	4	0				
25	"	"	HRYR	FQMA		140	SAME AS ABOVE PLUS IRA MAGAZINER		3	8				
26	"	"	FQMA	FACT		141	SAME AS ABOVE		2	4				
27	"	"	FACT	FAJS		142	SAME AS ABOVE LESS, JE, GM, SK, CL [redacted], [redacted]	1/	2	[illegible]				
28	"	"	FAJS	FACT		143	SAME AS ABOVE LESS [redacted], IRA MAGAZINER		2	0				
29	"	"	FACT	DGAA		144	SAME AS ABOVE ADD, JE, GM, [redacted], [redacted], [redacted]		6	2				
29	"	"	DGAA	LFPB		145	SAME AS ABOVE	/1	6	5				
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							Amount Forward	6553 6200	8784	1	3	3	113	1
							Total to Date	6558 6266	8846	6	3	3	113	1

I certify that the statements made by me on this form are true.

Pilot's Signature David Rodgers

From: Martin Weinberg [redacted]]
Sent: 8/13/2018 7:30:44 PM
To: Jeff Epstein [jeevacation@gmail.com]; Martin Weinberg [redacted]
Subject: Fwd: Viceland

Importance: High

Fyi

Sent from my iPhone

Begin forwarded message:

From: Matt Williams [redacted]
Date: August 13, 2018 at 3:15:32 PM EDT
To: "Martin G. Weinberg" [redacted]
Subject: Re: Viceland

Thank you Marty,

The questions we wanted to reach out to Mr Epstein for comment are listed below. Feel free to contact me on [redacted] after reviewing. Kind regards - Matt

A former employee has told us that Donald Trump attended Mr Epstein's Palm Beach estate on at least two occasions. Does Mr Epstein recall hosting Donald Trump at that residence?

On one such occasion, it has been suggested to us that Mr Epstein and Donald Trump watched "young girls try on bikinis" while making comments on the their bodies." Does Mr Epstein have any comment?

How does Mr Epstein respond to claims that women - some under the legal age of sexual consent - were used as "sex slaves" at his properties?

A former employee of Mr Epstein has alleged to us that Mr Epstein sexually assaulted her on numerous occasions. Does Mr Epstein have a comment?

Did or does Mr Epstein have cameras inside rooms at his Palm Beach residence?

Did Mr Epstein remove those cameras before police raided the property as part of the investigation into alleged crimes? Did Mr Epstein ever hand over any recordings from any cameras at his properties to the authorities as part of his non-prosecution agreement?

Does Mr Epstein have in his possession any video recordings of Donald Trump taken from inside his Palm Beach estate or any other residence?

Did Mr Epstein hold sex parties at his residences involving girls under the age of sexual consent? Was Donald Trump ever present at any of these parties?

Has Mr Epstein upheld the conditions of his sentencing and registered as a sex offender in all jurisdictions in which he is due to do so?

Does Mr Epstein have any comment regarding allegations made by a woman named in the media as Virginia Giuffre/Roberts relating to her being sexually abused by Mr Epstein or used as a "sex slave"?

ENDS

On 13 August 2018 at 14:52, Martin G. Weinberg [redacted] wrote:

> If you still want, send the questions. I would talk with you off the record after reviewing them (reserving the right at my option to make an on the record statement), hope that works for you. Marty
>
> **From:** Matt Williams

Sent: Saturday, August 11, 2018 12:41 PM
To: Martin G. Weinberg
Subject: Re: Viceland

Hello Martin,

Thank you for getting back to me. We would be looking for on record comments or a "no comment" to our questions. But I am certainly happy to have an off record conversation with yourself as well. Perhaps we could set up a time to chat briefly off record on Monday before I send you our questions for Mr Epstein?

Kind regards,
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>
> Martin G Weinberg PC
> 20 Park Plaza
> Suite 1000
> Boston, MA 02116
> Tel [redacted]
> Cell
>
> ---
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From: Kathy Ruemmler [redacted]
Sent: 8/14/2018 2:09:34 PM
To: jeffrey E. [jeevacation@gmail.com]
Subject: Re: Viceland

Importance: High

Privileged - Redacted

On Aug 14, 2018, at 10:07 AM, jeffrey E. <jeevacation@gmail.com> wrote:

Privileged - Redacted

On Tue, Aug 14, 2018 at 10:06 AM, Kathy Ruemmler <[redacted]> wrote:

Privileged - Redacted

On Aug 13, 2018, at 3:32 PM, jeffrey E. <jeevacation@gmail.com> wrote:

---------- Forwarded message ----------
From: **Martin Weinberg** <[redacted]>
Date: Mon, Aug 13, 2018 at 3:30 PM
Subject: Fwd: Viceland
To: Jeff Epstein <jeevacation@gmail.com>, Martin Weinberg <[redacted]>

Fyi

Sent from my iPhone

Begin forwarded message:

From: Matt Williams <[redacted]>
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To: "Martin G. Weinberg" <[redacted]>
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> **Sent:** Saturday, August 11, 2018 12:41 PM
> **To:** Martin G. Weinberg
> **Subject:** Re: Viceland
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> >
> > Martin G Weinberg PC
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> > Suite 1000
> > Boston, MA 02116
> > Tel [redacted]
> > Cell
> >
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From: Martin G. Weinberg[redacted]
Sent: 8/17/2018 2:48:49 PM
To: jeevacation@gmail.com;[redacted]
Subject: Fw: Viceland

Importance: High

FYI

From: Matt Williams
Sent: Friday, August 17, 2018 10:29 AM
To: Martin G. Weinberg
Cc: Tracie Morrissey
Subject: Re: Viceland

Hello Marty,

Just following up on the email I sent you earlier this week requesting comment from Mr Epstein, or a representative of his, in regards a number of questions we had. I'm also cc-ing my colleague Tracie, as going forward she will be a better point of contact should you or Mr Epstein wish to respond.

Kind regards,
Matt

On 13 August 2018 at 15:15, Matt Williams [redacted] wrote:

> Thank you Marty,
>
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>
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Subject: Re: Viceland

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Martin G Weinberg PC
20 Park Plaza
Suite 1000
Boston, MA 02116
Tel [redacted]
Cel

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From: jeffrey E. <jeevacation@gmail.com>
Sent: Friday, January 9, 2015 6:08 PM
To: Landon Thomas Jr.
Subject: off the record

Importance: High

Landon. [redacted]. the story teller , crafted much of it out of whole cloth. . part of her story , is that she was at multiple orgies with clinton and speciifically, the minute details of a dinner had on the island with him, " he sat on my left. came by black. heli. flown by ghislaine. clinton was NEVER EVER there, never. it punches a hole in the dershowitz , andrew allegation. making it all apparent that it was fantasy. and delusional. thoughts. who should break the story.

--

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From: jeffrey E. [jeevacation@gmail.com]
Sent: 1/9/2015 6:20:08 PM
To: Thomas Jr., Landon [redacted]
Subject: Re: off the record

Importance: High

number?

On Fri, Jan 9, 2015 at 2:17 PM, Thomas Jr., Landon <[redacted]> wrote:

> Lets have a chat -- you do need to fight back some how. Present evidence that she is lying AND show the world that you are no longer that guy. You have made changes -- and that this is the past. My sense is that its TV type thing where you just talk honestly about this/present evidence that its not true/ and focus on what you have been doing for past five years. Charlie Rose?
>
> But you cant just sit there taking punches like this -- especially wen the British tabs are driving this.
>
> Maybe you go on British TV....
>
> Call me any time.
>
> On Fri, Jan 9, 2015 at 1:08 PM, jeffrey E. <jeevacation@gmail.com> wrote:
>
> > Landon. [redacted] the story teller , crafted much of it out of whole cloth. . part of her story , is that she was at multiple orgies with clinton and speciifically, the minute details of a dinner had on the island with him, " he sat on my left. came by black. heli. flown by ghislaine. clinton was NEVER EVER there, never. it punches a hole in the dershowitz , andrew allegation. making it all apparent that it was fantasy. and delusional. thoughts. who should break the story.
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>
> --
> Landon Thomas, Jr.
> Financial Reporter
> New York Times

> [redacted]
> http://topics.nytimes.com/top/reference/timestopics/people/t/landon_jr_thomas/index.html

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---

From: jeffrey E. [jeevacation@gmail.com]
Sent: 1/10/2015 2:57:45 PM
To: Michael Wolff [[redacted]
Subject: Re:

Importance: High

[redacted] talk then

On Sat, Jan 10, 2015 at 10:22 AM, Michael Wolff <[redacted]> wrote:

> Can you talk at noon? Probably need about 30 minutes. What is best number?
>
> On Fri, Jan 9, 2015 at 1:44 PM, jeffrey E. <jeevacation@gmail.com> wrote:
>
> > anytime tomorw ok
> >
> > On Fri, Jan 9, 2015 at 2:33 PM, Michael Wolff <[redacted]> wrote:
> >
> > > Is Clinton willing to say he was not there? Btw, I've just filed a column for USA Today for Monday explaining how Dershowitz and Andrew allegations were picked up from unverified civil court docs, transferred to UK tabs, which go wild because of no libel rules on U.S. court papers, and then translated back here as "reported fact." Problem with [redacted]story is that tabs are too invested in present story line, and unlikely that the Times or WSJ will want to touch it--tho, depending on who is willing to on record, they might. There is another politico reporter I know who might do it, again, if the on-the-record sources are public people. Or, I will use it for New York Magazine, but that won't be until Feb. Can you still talk tomorrow? When works? Woody and Soon-Yi coming for dinner tonight. m
> > >
> > > On Fri, Jan 9, 2015 at 1:20 PM, jeffrey E. <jeevacation@gmail.com> wrote:
> > >
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From: jeffrey E. [jeevacation@gmail.com]
Sent: 1/10/2015 4:42:43 PM
To: Michael Wolff [redacted]]
Subject: Re:

Importance: High

now good?

On Sat, Jan 10, 2015 at 10:22 AM, Michael Wolff <[redacted]> wrote:

> Can you talk at noon? Probably need about 30 minutes. What is best number?
>
> On Fri, Jan 9, 2015 at 1:44 PM, jeffrey E. <jeevacation@gmail.com> wrote:
>
>> anytime tomorw ok
>>
>> On Fri, Jan 9, 2015 at 2:33 PM, Michael Wolff <[redacted]> wrote:
>>
>>> Is Clinton willing to say he was not there? Btw, I've just filed a column for USA Today for Monday explaining how Dershowitz and Andrew allegations were picked up from unverified civil court docs, transferred to UK tabs, which go wild because of no libel rules on U.S. court papers, and then translated back here as "reported fact." Problem with [redacted] story is that tabs are too invested in present story line, and unlikely that the Times or WSJ will want to touch it--tho, depending on who is willing to on record, they might. There is another politico reporter I know who might do it, again, if the on-the-record sources are public people. Or, I will use it for New York Magazine, but that won't be until Feb. Can you still talk tomorrow? When works? Woody and Soon-Yi coming for dinner tonight. m
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From: jeffrey E. [jeevacation@gmail.com]
Sent: 1/10/2015 5:58:11 PM
To: Michael Wolff [redacted]
Subject: Re:

free now

On Sat, Jan 10, 2015 at 12:43 PM, Michael Wolff <[redacted]> wrote:

> Need 15
>
> On Saturday, January 10, 2015, jeffrey E. <jeevacation@gmail.com> wrote:
>
>> now good?
>>
>> On Sat, Jan 10, 2015 at 10:22 AM, Michael Wolff <[redacted]> wrote:
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From: jeffrey E. <jeevacation@gmail.com>
Sent: Friday, January 16, 2015 9:37 AM
To: Mortimer Zuckerman
Subject: thoughts?

Out of respect and love for my former girlfrend I have tried to keep her out of my mess. she was never questioned , or subpeonaed. her name never surfaced. Marie never contacted her. I though it right as a friend to protect her name. however during the entire [redacted] time she was my serious girlfriend. She traveled with me almost everywhere. each house, she is on the plane many many times. she knew and remembers [redacted] She never saw anything that [redacted] She can confirm 1. I was never alone at the house. staff, friends etc. , no girl ever complained , not once. 2. jane doe 1 and 2 , were local strippers, that would call all the time asking if they could do massages. . . they left message after message. 3. We had a serious love relationship , I had promised her not to involve her in my story as it was so sordid. . she was 22 - 24 at the time. . 4 she has photos after photos showing we were together. . 5 she knows clinton was never on the island. 6 she knows no sex with steven hawking, she knows no sex with ehud as he was also never on the island. 6 she is 38 years old now and presentable. . 7 She woudl acknowledge that these girls asked to bring their friends . many of their best friends sat in the kitchen while they gave massages outside on the terrace. (no sex _). . they certainly looked over age. nevr heard anyone say otherwise. , Jeffrey never asked for underage, that is crazy, . . 8 . [redacted] answered the phones. served coffee. . there were many massage people , men women, aged up to 60.

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From: jeffrey E. [jeevacation@gmail.com]
Sent: 1/16/2015 6:23:52 PM
To: Michael Wolff [[redacted]]
Subject: Re: thoughts

today ok.

On Fri, Jan 16, 2015 at 10:54 AM, Michael Wolff <[redacted]> wrote:

> I don't think I would put her out there. It probably seems too self-serving. But let's discuss. I have an idea about how to best use. Do you have time to continue our conversation post-3:00 today or tomorrow?
>
> On Fri, Jan 16, 2015 at 4:36 AM, jeffrey E. <jeevacation@gmail.com> wrote:
>
>> Out of respect and love for my former girlfrend I have tried to keep her out of my mess. she was never questioned , or subpeonaed. her name never surfaced.. I thought it right as a friend to protect her name. however during the entire [redacted]time she was my serious girlfriend. She traveled with me almost everywhere. each house, she is on the plane many many times. she knew and remembers [redacted] She never saw anything that [redacted] claims. She can confirm 1. I was never alone at the house. staff, friends etc. , no girl ever complained , not once. 2. jane doe 1 and 2 , were local strippers, that would call all the time asking if they could do massages. . . they left message after message. 3. We had a serious love relationship , I had promised her not to involve her in my story as it was so sordid. . she was 22 - 24 at the time. . 4 she has photos after photos showing we were together. . 5 she knows clinton was never on the island. 6 she knows no sex with steven hawking, she knows no sex with ehud as he was also never on the island. 6 she is 38 years old now and presentable. . 7 She woudl acknowledge that these girls asked to bring their friends . many of their best friends sat in the kitchen while they gave massages outside on the terrace. (no sex _). . they certainly looked over age. nevr heard anyone say otherwise. , Jeffrey never asked for underage, that is crazy, . . 8 . [redacted] answered the phones. served coffee. . there were many massage people , men women, aged up to 60.
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From: jeffrey E. <jeevacation@gmail.com>
Sent: Friday, January 16, 2015 7:35 PM
To: Thomas Jr., Landon
Subject: Re: How are you holding up?

Importance: High

very well, my reputation has admittedly taken a hit . however, again, more calls re currency than i can handle. in addition I am considering a statement and positon that Out of respect and love for my former girlfrend I have tried to keep her out of my mess. she was never questioned , or subpeonaed. her name never surfaced.. I thought it right as a friend to protect her name. however during the entire [redacted] time she was my serious girlfriend. She traveled with me almost everywhere. each house, she is on the plane many many times. she knew and remembers [redacted] She never saw anything that [redacted]claims. She can confirm 1. I was never alone at the house. staff, friends etc. , no girl ever complained , not once. 2. jane doe 1 and 2 , were local strippers, that would call all the time asking if they could do massages. . . they left message after message. 3. We had a serious love relationship , I had promised her not to involve her in my story as it was so sordid. . she was 22 - 24 at the time. . 4 she has photos after photos showing we were together. . 5 she knows clinton was never on the island. 6 she knows no sex with steven hawking, she knows no sex with ehud as he was also never on the island. 6 she is 38 years old now and presentable. . 7 She woudl acknowledge that these girls asked to bring their friends . many of their best friends sat in the kitchen while they gave massages outside on the terrace. (no sex _). . they certainly looked over age. nevr heard anyone say otherwise. , Jeffrey never asked for underage, that is crazy, . . 8 . [redacted] answered the phones. served coffee. . there were many massage people , men women, aged up to 60.

On Fri, Jan 16, 2015 at 3:32 PM, Thomas Jr., Landon <[redacted] wrote:

> --
>
> Landon Thomas, Jr.
> Financial Reporter
> New York Times
> [redacted]
> http://topics.nytimes.com/top/reference/timestopics/people/t/landon_jr_thomas/index.html

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From: jeffrey E. [jeevacation@gmail.com]
Sent: 1/16/2015 7:52:31 PM
To: Thomas Jr., Landon [redacted]]
Subject: Re: How are you holding up?

Importance: High

it is the begining world currencies are out of balance. brazil, etc

On Fri, Jan 16, 2015 at 3:45 PM, Thomas Jr., Landon <[redacted]> wrote:

> I think the big issue is separating yourself from Andrew. I mean I can see why a statement might help in some way -- but its Andrew (not clinton and the rest) that is keeping the story alive. Until you are able to come forward and address that the story lives on. I mean in the end he had consensual sex with [redacted] And [redacted] worked for you. The rest is atmospherics. You have moved on! People don't know that and cant accept that unless you say as much.
>
> Does franc drama worry you? Am writing on it now...
>
> On Fri, Jan 16, 2015 at 2:35 PM, jeffrey E. <jeevacation@gmail.com> wrote:
>
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Landon Thomas, Jr.
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New York Times
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From: jeffrey E. [jeevacation@gmail.com]
Sent: 1/16/2015 8:12:46 PM
To: Thomas Jr., Landon [redacted]
Subject: Re: How are you holding up?

yes, but not if you own dollars. bitcoin collapse pound is the most overvalued of alll but its a tax haven. norwegina kroner weak. sfr ,dollar . only thing to own

On Fri, Jan 16, 2015 at 3:56 PM, Thomas Jr., Landon <[redacted]> wrote:

> that is old news -- buy dollar and take a nap? Kind of like buying Apple?
>
> On Fri, Jan 16, 2015 at 2:52 PM, jeffrey E. <jeevacation@gmail.com> wrote:
>
>> it is the begining world currencies are out of balance. brazil, etc
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New York Times
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It's an absurdly vast house, among the largest in Manhattan, but the dining room is windowless, creating a hermetic or stop-time sense, broken only by the household help ferrying in time-of-day-appropriate foods and beverages.

In sweatshirt, draw-string pants, palm beach slippers, and half glasses, Jeffrey Epstein sits at the head of the table. He spends most of his day in the dining room, remote from the world, in front of a lap top and beside a row of reading glasses (there are a lot of them in case, apparently, he misplaces a pair, but being quite meticulous he never does) advising, or instructing, a startling collection of the rich and powerful, slotted in on an hourly basis.

The apartness of Epstein's dining room might seem to offer some buffer in this leveled, angry age for a super rich man who attends to even more fabulously rich men (and the occasional extremely rich woman). On the other hand, with the paparazzi often posted near by, the outside world seem dangerously close too. (Once I arrived for a visit and found several police cars blocking the street and thought the worst—they'd come for Jeffrey. But it was a security detail for a controversial head of state, also visiting him.)

His subject for the morning is "hyper wealth." His subject is always some rarefied science or wealth, todays topic is how capital will most likely react to the given global political, economic, and cultural moment. The otherwise baronial dining room is disturbed by an ever-present white board, on which he scribbles calculations and notes, conducting perhaps the world's most rarified economics class, often to many of the world's finance ministers and foremost economists.

Epstein's apartness or parallel life reflects much of the other-worldly characteristics of the wealth revolution that began in the late 1970s and that continued through the Wall Street boom of the 80s, the tech boom of the 90s—surviving, to often bitter attack, the banking crisis—and that has now seen the emergence of the international billionaire and oligarch class. He has quite turned himself into a hyperbolic representations of this wealth and hence, in a way, become accountable for it.

His own way to riches was to become a voracious student of the new money, as well as one of its larger than life characters, as it grew to an unanticipated and disruptive scale. His stock in trade is not precisely the making of money, but the corollary issues that arise when money, at a heretofore unimaginable scale , in personal hands alters many basic economic and social principles.

He recounts a dinner he had two nights before. It is, like much of what he does, a conspiracist's fantasy. The six men at this dinner, all technology entrepreneurs, represented, together, over a hundred billion dollars.

"In the past, only governments had this amount of money," says Epstein conversationally, but making a pedagogical point, "money at a reality altering scale. In fact, it used to be that the rich, reaching a certain point of philanthropy, merely hoped to help make the world a better place, now they want to change the world. Rockefeller and Carnegie were, as examples of social-engineering philanthropy, unique. They alone had such resources and will. Now you have legions of people who have to give away vastly larger amounts than Rockefeller or Carnegie had at their disposal, or might even have imagined.

"Except that it's actually hard to give away this kind of wealth, without the always accompanied , unintended consequences, that can cause more problems than you're solving."

Epstein's long-time business thesis is that the rich know little about the essence of money. They may know about generating it in their own businesses, but the great sums that result ,demand an entirely different sort of an intellectual discipline. The Forbes 400, says Epstein, not immune to still exhibiting an amount of wonder, increased their wealth by over $500 billion last year, meaning, in effect, that on average every Forbes-list billionaire increased their wealth by more than a billion only in one year. And, points out the 62-year-old Epstein, they will almost all be dead in 40 years, most well before that, meaning $4.2 trillion, compounding everyday, will have to be eventually change hands. "So, to understand the future, what you have to begin to do is follow the money, not in Watergate-like terms backwards, as in who has gotten it, but forwards to where it will go and who will get it."

Epstein can find himself echoing aspects of Thomas Piketty on the inequities of the accumulation of wealth ("the divide is between people with assets, which appreciate, and people without assets, who fail to advance—that is, of course, the miracle of compounded interest"), except for the fact that Epstein, knowing the rich, understands a curious point that Piketty doesn't: "Nobody, *nobody*, wants to give it all to their children. Everybody now has the modern appreciation that one of the curses of great wealth is that it can make your kids weird ."

Epstein's position in this private allotment of a decent fraction of the U.S. Gross Domestic Product is not solely as a philanthropist but as a higher sort of banker or guru or brain—a rich whisperer—making him, in addition to rich himself, arguably, among the most influential people you've never heard of.

Though, likely, you have heard of him, but not for his prowess with high financial abstraction, but for a scandal of such luridness that he is, for a great many,is the new poster child of the lawlessness of privilege, and for a much smaller but elite circle, the poster child for what can happen when you become the target of a resentful world. He is *that* Epstein, according to the Daily Mail—among his most frothing-at-the-mouth antagonists—"one of America's most notorious sex offenders."

And yet the mighty and powerful, apparently evaluating the nature of disgrace on their own terms, beat a path to his door. It's a fantastic conclave of influence in his dining room: financiers, billionaires, heads of state, economic ministers.

He surely represents the kind of insiderism that is mostly just a figment in outsiders' fantasies. Except for the fact that, straining credulity, Epstein is for real. His is an ultimate sort of fantasy of power, wealth, and secrecy. (In 2004, when the then owners of this magazine put it up for sale, I was involved with a group trying to buy it—an effort in which Epstein volunteered to invest $20 million. New York was subsequently sold to another wealthy investor.)

Without ever being asked to keep what I have heard there off the record, I've willingly done so, least I not be invited back. And, too, to protect him. Who would understand Jeffrey? Who could explain him?

Certainly Epstein's past encounters with the press (and in many ways with the masses) have been about as disastrous as any could be, helping to open a Pandora's box of lifestyle vulnerabilities that sent him to jail on a prostitution charge in 2008.

And yet here he is, in his 50,000 square foot mansion, dispensing advice to world leaders and business titans.

Indeed, Epstein has been advising one the worlds largest foundations on a new way to increase its already vast clout by adding funds from other wealthy individuals that can use the foundation resources (the Gates Foundation now employs 1,200 people), but which can be directed to separate causes and goals. And it is some of the hyper wealthy that at the end of the summer began prodding Epstein to begin a process of public rehabilitation.

Hence, as part of an effort to get "out in front" of the unfavorable notice that might greet the public association with him, Epstein agreed to several on the record conversation with me, in the hope, and promise of a second chance, , that, after five years since his release from jail and relative peace, he might be able to leaven his reputation. And with the hope on my part of learning more about how and if the rich are different than you and me (although we can fairly dispense with the if).

Then, just before the New Year, Epstein forwarded me a heads-up email that Alan Dershowtiz, one of Epstein's long time friends—they have a bickering brotherly relationship—and occasional legal advisors, had received from a reporter at Politico and forwarded to Epstein. The Politico reporter had been following Epstein-related court filings (there is a determined contingent of Epstein reporters) and found a new one added to an old law suit with some rather jaw-dropping claims.

Six years after the original suit, a Florida lawyer was now seeking to add new plaintiffs to the old case. This new filing was accompanied by allegations connecting a catch-all of bold-faced names associated with Epstein more than ten years ago, including Dershowtiz and Britain's Prince Andrew, to a "sex slave" ring—indeed, that Epstein's purported sex slaves had had sex with Dershowitz and the Prince at Epstein's command.

This seemed to me to be merely a desperate, even comic-book, filing—just a lawyer trying to revive a dead case. I responded to Epstein that I doubted this would be seen as credible by anyone.

Epstein, who sometimes seems to have an out-of-body attitude to his own fate and bad press, said he thought it might be "quite a show."

Two days later, the Daily Mail, which has become the effective ground zero in the English language for anti-privilege, and moral opprobrium (the more salacious the better), and whose editor Paul Dacre has a long time feud with Prince Andrew, put the story on its front page. (Epstein also has a long relationship with the family of disgraced press baron, Robert Maxwell, another reliable target of the British press.) Flimsy and far-fetched court filings in the U.S. by settlement-hungry plaintiffs might be discounted by skeptical U.S. reporters, but, the U.K. media, constrained by onerous rules about legal proceedings in the U.K., promptly went into tabloid frenzy (even the normally sniffy Guardian, in full anti- royal and anti-billionaire fever, joined the tabloid show) and effectively exported the story back to the U.S., where Epstein's connection to Bill Clinton, and, hence as a shadow over Hillary, became the news.

"I told you so" said Epstein.

There is Epstein in his inner world, trying, quite ostrich like, not to look out. Little beyond his strict realm seems palatable or even in a sense familiar to him. He's a foreigner out here. Not too long ago, I met him for lunch in the West Village, the first time in more than ten years, he said, he'd been out to lunch in a restaurant (a not particularly pleasant experience for him and we were done in under 30 minutes).

Then there is the outside world pressed to the glass, appalled and titillated by the monster inside the big house—a kind of Boo Radley of the Upper East Side. I have taken friends by the Epstein mansion, and the reaction to its other-worldly size in Manhattan is almost always the same: a gasp. Press accounts, seldom supplying new information, ever recycle and repeat the mysterious (and monstrous) billionaire mythology, with brief glimpses of him stepping out of the house (the same photos endlessly republished), and the assumption of depravity inside.

In fact, the life in the house, without wife or children or conventional domestic demeanor, in some way conforms to the most scripted fantasies: a life somewhere between Daddy Warbucks and Eyes Wide Shut.

The domesticity of the house, and the background of Epstein's problems, centers around a group of young women who act as his support staff and companions. Some have worked for him for many years, marrying, having children, and continuing as part of his business and household infrastructure. One woman, on an afternoon when I was there, recently married, had just returned from an around the world honeymoon that Epstein had arranged for her. Some are his romantic interests. His present girl friend is in dental school. One former girlfriend, Eva Andersson Dubin, a Swedish model and Miss Universe finalist, became a doctor and married hedge funder Glen Dubin and together they finance the Dubin Breast Center at Mount Sinai Hospital. Most at one time will travel with him to his other floating residences—the ranch in New Mexico, a vast apartment in Paris, the Island in the Caribbean, the house in Palm Beach.

This is so outside of conventional living or staffing or romantic relationships that it is hard to describe in a straightforward or straight-faced way. It sometimes seems part of Epstein's implicit challenge: not just look at me, but can you even believe what you see? Or it seems he is just oblivious to what others are thinking. A willful and perhaps fatal tone deafness.

But Hefnerian prurience can also be quite businesslike: poised young women in a mansion on the Upper East Side with various office responsibilities are really not that different from any of the art galleries in the surrounding neighborhood.

Epstein's young women mingle freely with his powerful guests, not so much as hostess or, in tabloid language, harem-like (or as "sex slaves"), but often as attentive students (that, of course, might be regarded as having its own fetish-like attraction).

Not long ago, Epstein invited me to sit in on a day of presentations to him in his dining room by various "quants." Quant theory involves making investments based solely on mathematical and statistical models. This method can often have uncanny predictive powers. But the problem is it doesn't scale very well—the market, having discerned a pattern of successful investing, quickly copies and discounts the advantages of the strategy, . Epstein's effort was to identify, dissect and choose a dozen or so promising algorithms (each quant is effectively hawking his secret sauce algorithm) and invest up to $5 million with each. I knew paltry little about this and so rather found myself identifying with the young women to whom Epstein was explaining the basic math and mechanics—out of my league, but grateful for the lesson.

The Epstein house/office is, by careful design, exclusive and club like, part hang out, part secret society. Along with the difficulty in explaining why, even after his jail term, the rich and powerful continued to beat a path to his door, it's also notable in the fixed hierarchy of who comes to whose turf, that everybody, when they went to see Epstein, comes to him.

A week in late September, U.N. week as it happened, began, on Sunday, at Epstein's house with a colloquial for billionaires—Gates, Mort Zuckerman, and Peter Thiel [TK].

Epstein, preternaturally responsive to both the price of oil and to the politics of the middle of east, entertained that evening a delegation from Qatar, including Sheikh Hamad Bin Jassim, the foreign minister. Hamad, indeed, lives across the street in a similarly furnished house—he and Epstein have the same decorator. Epstein, in his relaxed and amused manner, kept prodding: "Why are you financing the bad guys? What do you get out of that?"

The Qatarians, in some mild diplomatic discomfort, seemed most worried that their bid for the World Cup might be compromised by bribery allegations.

At 9:00 next morning, Epstein is joined for breakfast in the dining room by Reid Weingarten, who's represented among other fat cats in trouble, Worldcom's Bernie Ebbers and Goldman Sach's Lloyd Blankfein and is one of attorney general Eric Holder's closest friends. Weingarten, horse, with a cold, and dejected, is just back from a failed defense of former Connecticut Governor John Rowland.

After a blow by blow of the trial, there's a discussion of the Qartarian's visit—Epstein is serving chocolate made from pistachios grown on the Sheikh's farm—and speculation about who actually controls ISIS.

"Why?" I asked Weingarten, when Epstein briefly steps out of the room, "do some many people keep coming back here, everything considered."

"Why we camp out here? I guess because there's no place like it."

Epstein summons in the next person cooling his heels in the ante-room. It's a young man named Brock Pierce, a former child actor, and dotcom high flyer—a principle in a gaming company called DEN, a notorious dotcom burnout, with its own sex scandal—who is now a leading investor in Bitcoin. He describe himself as the "one of the most active investors in the field."

And, indeed, is the first clear explanation I actually get about Bitcoin. It is so good that Epstein stops him and checks to see if his next appointment is here. And seconds later, Larry Summers, the former treasury secretary and President of Harvard, enters the dining room. Summers, off Diet Coke, digs deep into the Sheikh's chocolates, focuses in on the Bitcoin investor.

"Okay," he says, after listening for a bit, "I have opportunities here. But an additional feature of my decision problem roughly speaking is that the worst that could happen to you is that you could lose all the money you put into it. Whereas I could go from being seen as a figure of some probity and some intelligence to being a figure of much less intelligence and much less probity…"

"Well," says Pierce in some dramatic understatement, "it is true that you are going to have some low quality characters playing early in the space…"

That evening, there is a small cocktail party, which includes the former Prime Minister of Australian, Kevin Rudd, and Thorbjørn Jaglandthe head of the Noble Peace Prize Committee, who offers an affable, but general scathing, critique of U.S. diplomacy (and a brief defense of Obama's Peace Prize award) and to whom Epstein offers a ride back to Europe on his jet.

The next morning, it's Ehud Barack, the former Israeli Prime Minister and Israel, for breakfast. Barack is, over his omelet, able to defend both Obama and Putin. Then Kathy Ruemmler, who has just left her job as White House Counsel joins. She is already in the mix as a possible next attorney general, but, in fact, will withdraw after considering her options.

Larry Summers wife, Elisa New, drops by. She teaches American poetry at Harvard and is putting together a proposal for a series on poetry that WGBH in Boston may produce and Epstein is advising on where she might go for added support (he also makes mince meat of her budget).

There follows the former head of the UN Security Council, Hardeep Purie, and then head of the central bank of Kazakhstan, Kairat Kelimbetov.

. Then Martin Nowak a Professor of Biology and Mathematics and Director of the Program for Evolutionary Dynamics at Harvard, the institute that Epstein has funded with $30 million. Part of Nowak's research has to do with trying to "describe cancer mathematically." Epstein preempts Nowak's explanation (which I'm not quite getting): "Think of cancer the same way as you think of a terrorist group. The NSA has been able to thwart a great number of terrorism acts by intercepting communication signals from one terrorist to another. That same dynamic, a form of signal intelligence, of finding a terrorist in Europe, can be used to intercept communication between cancer sells. Cancer cells merely communicate in protean code rather than electronic code. If you can decode what the signals are saying you can jam those signal between terrorist calls—essentially wipe out their cell phones. Likewise if you can decode biological signals you can jam them too, that's the holy grail."

Then Richard Azel, a Nobel prize winner in physiology. Then Ron Baron who, in his Baron Fund, has $26 billion under management. Then Josh Harris the co-founder of Apollo Global Management ($164 billion under management) and owner of the New Jersey Devils and the Philadelphia 76ers.

Perhaps it's just the ultimate feminist nightmare: Men (and a few more that a few women) continue to come to Epstein's because—no matter their public bows to modern manners—they simply don't care that he offends every aspect of reconstructed gender and political sensibilities. In private, it remains a man's world—a rich man's world.

Or, it's a guilty pleasure. People who know Jeffrey exchange "Jeffrey" stories. "That's Jeffrey," says Mort Zuckerman, the real estate billionaire and publisher of the Daily News (ever vitriolic in its coverage of Epstein), with a twinkle in his eye and obvious enjoyment, to tales of Epstein escapades. It is an outréness that Epstein seems delighted to cultivate. In his Paris apartment, 10,000 square feet on the Avenue Foch, a neighborhood otherwise occupied by foreign potentates, there is a stuffed baby elephant in his living room—that is, the *elephant in the room*. (Epstein says too it's a reminder of his genetic engineering initiatves that are inspired by the fact that elephants have 23 copies of tumor suppressor genes, never getting cancer in the first place. while humans have only 1.) The single book on his bedside table is Lolita (he is, beyond the joke, a great Nobokov fan).

Or, in a more sophisticated view, it's a two tier understanding of the world. There is a media version of the world, in which most of us live and largely accept, and are certainly influenced by. And then there are those people who live in the reality and therefore know that the media version is mostly bunk. If the media trumpets it, it is likely that some version of the opposite is true. I might guess too that for many of his visitors there's an order of identification: there but for the grace of God. Any hyper-prominent person might, at any time, himself also run afoul of prosecutors, the political moment, the media, or the Internet hoi polloi.

In this view, Epstein is a sort of Dreyfus of the rich.

And then there is the glue of wealth. Once, at lunch in the Epstein dinning room with Bill Richardson, the former Governor of New Mexico, and past Presidential aspirant, when Epstein left the room for a few minutes, I asked the obvious question, the one everybody asks each other, "How did you meet Jeffrey?" Richardson seemed surprised: "Jeffrey," he said, as though stating what should have been perfectly obvious, "is one of the largest landowners in New Mexico."

And then there is Epstein's yet more structural explanation as to why after jail and with continuing tabloid infamy he can maintain his valued place. It comes back, not unexpectedly, to the nature or the needs of money:

"At a certain level of finance, almost everyone is attached to an institutional . You are part of government, you want to be in government, or you are connected to a major bank or other portfolio, or you have fundamental relationships with distinct corporations or industries. Because of my more colorful past, I have none of that. I have no restrictive institutional ties which makes me in some sense one of the few wholly independent sources of information and truly independent brokers. That's the usefulness of disgrace."

And then there is too, that he is right. Since I began working on this piece in September, Epstein predictions about the price of oil, yen, ruble, and euro have all born out. ((If I had invested $100,000 the way Epstein said I should in early

September, by the end of January I would have made $TK million. Alas, I did not invest.)

And something else, which perhaps also surely accounts for Epstein's continuing relationships with the rich and powerful:

Most everyone who is now of a certain age and certain ambition and certain status grew up in, and found they were temperamentally suited to, the new age of wealth that started in the late 1970s. A meritocracy on steroids, or, as Vanity Fair would baldly and ingratiatingly dub it, the new establishment, an increasingly parallel world, a self-invented one, at further and further remove from the ordinary one. Epstein is just one version, albeit picaresque, as well as louche, of this shared story.

He often tells, with some obvious marvel, his middle class to riches tale: born in 1953 in Coney Island, father works for the city's Parks Department, mother a housewife.

His sport, the captain of the math team at Lafayette High school. HE goes on to Cooper Union where the tuition is free. He drops out after two years and begins taking classes at the NYU's Courant Institute of Mathematics. Then, without a college degree, and a sleight of hand, gets a job teaching math and physics at Dalton in 1974. (A few years ago, during a chance encounter with a former Dalton math department chairman, Margo Gumport, I asked her about Epstein. She said he was the most brilliant math teacher at Dalton in her 50-year career and that she had often wondered what had become of him.)

It's his first exposure to the wealthy. They have, he concludes, just as many problems as the people in Coney Island, just different ones, almost invariably involving children ,divorce and money. "I found it as interesting as a physics experiment," he recalled recently as we chatted about his life. "It did not really involve me. I could just stand back and watch the experiment unfold."

Dalton fathers were attracted to him. Punch Sulzberger, the publisher of the New York Times, and a Dalton father at the time, tried to recruit Epstein to come to the Times. (Epstein recounts with astonishment ,a story of riding with Sulzberger in his wood paneled station wagon to the family's country estate and Sulzberger talking to the chauffer on a phone from the backseat to the front.)

In 1976, another Dalton father, asking "wouldn't you rather be rich than be a teacher?" introduced him to Bear Stern's chief Ace Greenberg, a conversation Epstein recounts as this:

Greenberg: "Everyone tells me you're super smart in math and you're Jewish and you're hungry…so why don't you start working here tomorrow?"

Epstein: "What?"

Greenberg: "If your supposed to be so fucking smart"- "don't you understand English?"

Epstein: "Ok. Count me in."

Hence, Epstein, like many in the late 70s, arrived on Wall Street.

As will happen to a generation of others, by the fortuitous luck of being on Wall Street at that point in time, Epstein is transformed by a new, much faster, form of upward mobility than has ever before existed. With an extreme facility for mathematics as well as for getting along with rich men, he transforms at an even faster rate than so many others who are also being quickly transformed.

He moves into the penthouse of a new building at 66th Street and Second Avenue—still in the shadow of the Maxwell Plum era when the 60s on Second was the glamour address—a building that was he says, as a fond memory, full of "actresses, models, and euro trash." (It would shortly become the Studio 54 era, where Epstein, who has never had drink or taken any drugs, was a regular).

If on one side of Wall Street there were the salesmen (the Wolf of Wall Street model), on the other side there was a new sort of finance type able to embrace a level of acute financial abstraction.

"In the past," says Epstein, "investing was all about reputations and relationships. You invested in a company on the basis of who was running it. Did they have integrity? Were they married? Good family men? It was a 50's mentality. But in the mid 70s stock options started to be traded on an exchange. In essence, the first formally traded derivatives. The movement of these instruments are not directly tied 1to 1 to the stock price. The world of investing began turning from relationships to mathematics . In a sense I didn't really make money as much as I tried hard to create it." This was an intellectual activity of a fairly high order.

Intellectual activity aside, he meets Helen Gurley Brown and she makes him Cosmopolitan Magazine's Bachelor of the Month in 1980.

"What," I ask, "was your social life like?"

"Well, I was a playboy."

"That's all? Not looking to get married?"

"No. Never. I never wanted to get married. I enjoyed sex. I adore women. I wanted freedom. I was attracted to the rich because of their freedom. But I wanted also to avoid their burdens. And I didn't want to hide. I didn't want to be a hypocrite. I wanted to be free. I was not remotely ambivalent about what I wanted: to be free. That was my reason to make money."

His rise at Bear Sterns was a steep one. And he soon became the protégée of Jimmy Cayne (also hired by Ace Greenberg on a whim—he met him in a bridge game—who would go on to run Bear and to lose his fortune in Bear's 2006 collapse). Epstein's leave taking or ouster from Bear is the result of politics, envy, overreaching, or a securities violation, or…unclear. But, no matter, he leaves in

1982 with billionaire clients, including Marvin Davis, a real estate developer who owns Twentieth Century Fox, and Herb Seigel, a major media investor in the 1980s. Epstein is dating Morgan Fairchild, a television star in the new mega-rich-family soap operas, Dallas and Falcon Crest (plot lines from which Epstein might easily step).

Now begins the Concorde phase of his life—and the Concorde phase of the 1980s. If the 80s are happening pell mell in New York, they're happening at double time and catch up speed in London. Epstein is 30 years old and living, in Lifestyle of the Rich and Famous fashion (he befriends the show's star, Robin Leach), at English shooting parties at country estates with Saturday night black tie dinners, where he's meeting the over-the-top families of Europe.

"I didn't take it seriously," Epstein recounts. "I was not caught up in it. I wasn't trying to make a billion dollars. There was no ultimate goal. It was just fun to meet smart people, interesting people. But no long-range plans. Often no short-term plans either. I would head to Kennedy and, on the theory that most important events in one's life are purely a result of serendipity, I wouldn't decide where I was going until I got there."

At the same time, he is developing a unique perception, or, at least a market differentiation: the hyper wealthy had signifcantly different problems than the very wealthy. Dealing with a billion dollars was different from dealing with $100 million:

"If you had a billion dollars I would think the last thing you should be worried about was money, in truth money, was what they most worried about. How to make more of it, how to give away more of it, how to protect you children from it, how to hide it from your wife or husband, how to minimize your taxes on it. The traditional wealth service structure, an accountant, and investment advisor, a personal lawyer, and an idiot brother-in-law, became hopelessly outdated as fortunes eincreased exponentially .

"You can't spend a billion dollars, you can just reallocate it to a different investment classes. And you can't give away a billion dollars without a vast staff, in effect going into the business of giving away money, yet another business you are likely not to know very much about"

At just about this point in the narrative, the questions or the incredulity begins in social circles and eventually in the media. He begins to acquire the major symbols of riches but does this without position, public holdings, or transparent paper trails. How can a person have enough money to merit increasing attention, but no clear way of having gotten it? Epstein gets stuck in that tautology. He may be rich, but he is without institutional protection or bona fides. He isin a questionable substrata of wealth. He's a freelancer.

That's the rub: he doesn't work for anyone. Without institutional credentials he's…well, nobody knows what.

For a period, one part of his activities he says is recovering monies for countries looted by exiled dictators or military strongmen. If early in his career he might seem like a sort of George Peppard (there's a physical resemblance) in Breakfast at Tiffany's, a charming hustler, later he's George Peppard in Banacek, a smart and astute operator.

Then, in his version, he's representing a series of vastly wealthy people and families. He's not just doing their bidding or their investing, he's helping them to navigate the potententials of their wealth. They've satisfied their business dreams. Now there are the separate challenges and possibilities .

In essence, as Epstein becomes more of a public figure the response to this description of his livelihood, is, in the media and in high social circles, "bullshit." True, however , there is no clear alternate narrative. No one is accusing him of anything, accept, sometimes, guilt by association. (In addition to Robert Maxwell, who will be accused of fraud, there's Steven Hoffenberg, briefly a New York high flyer, who went to jail for a Ponzi scheme, for whom Epstein acted as a consultant—along with, he points out, Paul Volcker.) But the characterization persist: if it's not clear, it must be murky. Sure, Goldman Sachs partners and tech geniuses, they might have stratospheric wealth, but what to make of a Coney Island, Zelig-like no-namer?

In 1994, just at the moment when Prince Charles is on television acknowledging his love for Camilla Parker Bowles, Jeffrey Epstein is sitting with his arm around Princess Diana at a dinner at the Serpentine Galley in London (Diana is wearing her "revenge" dress that evening). Graydon Carter, into his second years as editor of Vanity Fair, is also at the dinner. Epstein's rise and Carter's rise are not, with a little critical interpretation, that different. Both are a function of the age of new money, both are helped by strategic relationships with the exceptionally wealthy (i.e. they are social climbers), both men have made themselves up. To say that Epstein, in the company of the Princess, sticks in Carter's craw would be a big understatement. Epstein becomes one of the "what do you know about him" figures in Carter's gossip trail—a story waiting to happen. A variety of the gossip that begins to circulate about Epstein—for instance, that he secretly films his guests—is seeded by Carter, who once advised me not to go to Epstein's house or accept a ride in his car least I risk being blackmail. ("For what?" I asked Carter. "You can't even begin to imagine," said Carter.)

Epstein is playing a cat and mouse game with his own growing wealth and influence. He is private and secretive, but grandly so. He joins the board of Rockefeller University. He's suddenly on the Trilateral commission, that cabal of business people who fancy themselves, and who are fancied by conspiracy buffs, as running the world. He buys from his client Limited Founder Les Wexner the larges private house in Manhattan. (Rumors will continue for many years, that Wexner owns the house and Epstein is just squatting in it, paying taxes on it, —an 18-year squat.) He buys an airplane. He buys another. He expands his holdings in New Mexico. He begins a Zanadu refurbishment of his Caribbean Island.

He befriends Bill Clinton in his new after-office life.

And that's quite the fatal pairing.

The post-Monica Clinton, now having pardoned the on-the-lam financier Marc Rich—at this point, before his own rehabilitation, Clinton really is the world's ultimate sleaze ball—is suddenly being ferried around in the jet of…*who* exactly?

The New York Post is the first to take formal media note of the Clinton-Epstein connection, hinting at a sex and money bromance. ("I suppose travel with Clinton changed the arc of my life," Epstein tells me. "There were, I knew, lots of obvious reasons not to do it, but having the ability to spend 100 hours with a former president just doesn't happen to many people.")

The instinctively private Epstein is not just increasingly exposed, but clearly curious about the nature of exposure.

I met Epstein around this time. Epstein had become a more and more active backer of advanced scientific research and in 2002 he was taking a small group of scientists out to the TED conference in Monterey. The TED organizers invited various other TED participants, including me, to join the flight. A small group assembled at the private plane terminal, most of us unfamiliar with our benefactor, and as we headed in the direction of the discrete private plans we were gently pointed to our ride: Epstein's 727.

It is some thoroughly updated drawing room set-up, all of us nervously ensconced in this luxury plane, waiting for our unknown host to arrive—and soon he does, tanned, relaxed, with wide open smile, accompanied by three young women.

It would be unlikely, outside of a men's magazine fantasy of the luxe life, that you could locate this in reality. Epstein's sincere attentions, taking time with each of his passengers, seemed impossible to account for. The quiet of the plane, engineered into acoustic perfection, seemed spooky. Epstein's three companions were witty, poised, helpful as well as powerfully alluring—as though stewardesses of bygone times.

(One more thing about this trip: Google founders, Larry Page and Sergey Brin, with their company still in its infancy, came out to see the plane on the Monterey tarmac and, with a few other Googlers, literally ran whopping from one end of the plan to the other. Then they described for Epstein, in what I can not now remember as a put on or entrepreneurial brainstorm, a brand extension in which they would market a line of Google bras with the Os as convenient cups. In fact, the name Google, they said, was invented out of the belief that men would focus on a word with two Os in it.)

Not long after this trip, Epstein's assistant called to invite me for tea at his house in New York, where Epstein, with what seemed to me little understanding of the subject, began to ask me about media—the upside, downside, and nature of media coverage. New York magazine was then soliciting him for a profile, as was Vanity Fair, who had assigned the British tabloid reporter, Vicki Ward, to the job.

Both profiles—New York's by Landon Thomas—pivot on the Clinton connection and detail the same quandary, how a man without clear institutional bona fides nevertheless achieves wealth and influence. Ward—who would more recently assert in the Daily Beast, that she was barred by Vanity Fair from writing about under-age sex evidence (a fact that could be read the other way: Vanity Fair, even looking to take down Epstein, did not find the evidence credible or supportable)—follows a rabbit hole of questionable contacts who might or might not have been the source or sources for Epstein's wealth, but gets no closer to an answer, beyond confirming her own sense of dubiousness.

Epstein, sensing that he might be exposing himself, tried to stop the process (Ward, often operatic about her journalistic exploits, says he threatened her), called Carter and said he was having second thoughts about being a public figure.

"Then you should live in a two bedroom apartment in Queens," responded Carter.

And then the troubles began.

Epstein, in man-who-can-have-everything fashion, and without the remotest sense of observance or propriety—as though a kind of cultural autism—has, for many years, ordered up a daily massage following his workout sessions.

"Often these were massage massages," says Epstein matter of factly, "but sometimes these were happy ending massages, especially in Palm Beach, where there are many massage parlors, and strip clubs —that do outcalls. There was no sex. An often there was no happy ending. Often I would be on the phone for the entire massage. There were however a lot of massages and a lot of girls, with one girl recommending others."

It is after Epstein's round of publicity and widely touted association with Clinton, that the stepmother of one of the massage parlor girls, identified as "SG" in court documents, who went to Epstein's house (most of the girls return to Epstein's house many times) calls the police. The police interview the girl who then supplies names of other girls. Some of whom are younger than 18.

In the end, the police track down 18 girls—nine who are under 18; the others in their 20s and 30s; one woman is in her 60s—a number of whom give statements describing scenarios not terribly different from Epstein's description above, except each is laid out in clinical, lurid, and near-identical detail. A cold Epstein demands that these allegedly unwitting juveniles (though they have come here for this very purpose) perform repulsive (or at least repulsively described) acts on him and then they return again. (Although the nature of the allegations will dramatically grow into threesomes and forced sexual encounters, nobody at this point alleges anything more than Epstein masturbating.)

Epstein vastly raises the stakes by calling Dershowitz, who flies into Palm Beach to put the local authorities in their place—alienating Palm Beach officialdom—and, doubling down on the profile of the case, brings in Roy Black the famous criminal attorney who defended William Kennedy Smith in his rape trial in Palm Beach.

Here's the narrative: the shadowy rich man, friend of the louche and disgraced President, at all times surrounded by a retinue of young and gorgeous female retainers doing his bidding, is now found to have gathered a network of wrong-side-of-the-tracks Palm Beach girls to provide him with weird sexual services. (It somehow reads weirder that he doesn't have sex with them.) To boot, his former girl friend, Ghislaine Maxwell—the daughter of the disgraced Robert Maxwell—encouraged at least one of the girls to come to Epstein's home (and forever more has become a fixture of further weird possibilities in this tale).

Palm Beach Police Chief Michael Reiter is reported to say: "This is bigger than Rush Limbaugh," who, in a storm of publicity, has just been arrested in Palm Beach for possession of controlled drugs.

On one side are some of the nation's most powerful defense attorneys (who, increasingly, seem more stumblebum than effective), on the other side, a round-up of hapless girls, with sensational tales of perversion and infamy (in the telling they are not so much sex workers, as Dickensian victims), relatively speaking giving the Palm Beach authorities the choice between utter capitulation to the powerful or standing on the side of the seemingly exploited and powerless.

Still, with a cold eye, it also quite appears to be a straightforward tale of prostitution (however more or less kinky). And even though some of the girls are minors, age is not a distinguishing factor in a solicitation charge in Florida, (in New York, for instance, at this time soliciting sex with anyone over the age of 14 is a class D misdemeanor calling for a $100 fine—the law has recently been changed to TK).

In fact, the very "SG" clearly tells the police that she lied about being 18 because otherwise she knew she would not have been admitted to the house (other girls will say they knew this is what they had to say, nevertheless not stopping them from saying it).

The local sex crimes prosecutor, Lana Belhalevic, interviews all the girls and determines that the offense is solely related to prostitution—that there are "no real victims here"d.

Dershowitz, with chest pounding bravado, rejects a series of lower-level plea deals and Palm Beach District Attorney Barry Krischer takes the unusual step of empanelling a grand jury, which returns with a recommendation of a single count of soliciting a prostitute—a charge without jail time. (And Epstein can apply to have his record expunged after a year.)

At which point, Reiter, the police chief, at odds with the District Attorney's office, recruits the involvement of the FBI. This is of course the Bush-era FBI and Epstein presents quite the Clinton-connected scandal. Still, solicitation, even of a minor, is not a federal crime. The FBI hits on the novel interpretation that if Internet solicitation can be considered interstate commerce, so can telephone solicitation, permitting them to begin a deep dive investigation into Epstein's friends, many of whom receive subpoenas and are threatened with prosecution.

It's all quite in the eye of the beholder: On the one end, Epstein is paying for sex acts (Epstein paid $200 for a massage with or without happy ending), on the other, he is abusing teenage girls. It's a catch-22: How can a girl not old enough to vote be a prostitute? And yet, many girls not old enough to vote *are without a doubt* prostitutes.

Compounding Epstein's predicament, the world outside of his carefully constructed and controlled environment is someplace that he seems not just ill-equipped to handle but in which he seems to be blindly grouping about (i.e. he's totally tone deaf). I visited him once during this time and found him weighing the conflicting advice of some of the most vaunted and egomaniacal lawyers (along with Dershowitz and Black, celebrity criminal attorney, Gerald Lefcourt, and Clinton prosecutor, Ken Starr) of the day—anyone with new advice, Epstein seemed to hire—as well as a catchall of the leading crisis managers, who he seemed to retain at will, all wrangling for fees and primacy.

Certainly, the upshot of his dealings with the Justice Department seem to involve a through-the-looking-glass logic. The government threatens to prosecute him (with the possibility of a 10-year sentence) and various friends, associates, and lovers, or offers what seems to be unprecedented arrangement in which Epstein's lawyers (not federal prosecutors, but Epstein's lawyers, in some ultimate act of self incrimination) have to go to the Palm Beach authorities and convince them to up the charges to an offense that will send him to jail and get him a sex offender status. Except that a solicitation charge won't produce that result. Therefore he has to get them to agree to a procurement or pimping charge (even though he has paid money, not received it—the sine qua non of pimping). What's more, in a unique, if not unprecedented arrangement, he has to agree to pay the legal fees of any of the girls who want to sue him—and, agree not to defend himself from their suits—forcing him to settle with each of the girls for what are reportedly high

6-figure sums or more.

He's sentence to jail in 2008 for 18 months and serves 13 (while Epstein is now frequently accused of somehow managing to cut short his sentence, almost all Florida prisoners serve only 70% of their officially sentenced time).

Jail hardly ends the legal catch all. Epstein's butler, Alfredo Rodriguez, steals and tries to sell an alleged journal or calendar with Epstein's activities—but he tries to sell it to an undercover agent. Rodriguez is sentenced to 18 months in jail on a charge of theft and of withholding evidence (it is not so much a journal as a list of phone numbers, which were apparently collected or saved by Rod Rodriguez; all of this stolen material was somehow subsequently included in a court filing by Edwards). Scott Rothstein, a lawyer whose firm represented additional girls in their suits against Epstein, also goes to jail for recruiting investors to pay for these suits on the fraudulent basis that settlements had already been reached. It's the largest fraud in Florida history and Rothstein receives a 50-year sentence.

Then, Brad Edwards, Rothstein's former partner, sues the federal government in 2008 for abridging the rights of two of the original complainants under the Crime Victim Rights Act (giving victims the right to be consulted about the disposition of their cases) regarding the Justice Departments agreement not to prosecute in favor of the state action. In 2014, Edwards tries to ad Virginia Roberts, another of the original complainants, who has previously settled with Epstein, to the long-running suit. Roberts who was paid a settlement under the original terms of Epstein's agreement—that he would pay attorney's fees and not oppose any law suits against him—is now trying to overturn the agreement under which she was paid, and, with Edwards, further suing Epstein for $50,000,000.

Indeed, Roberts, with the Daily Mail being her prime outlet, emerges as the most vocal accuser—and, in fact, the some total of the current story and attention.

That is, there is no story without her and what is being billed as her memoir of her "sex slavery" with Epstein, written ten years after the fact. Along with the Dershowitz and Prince Andrew charges, Roberts puts, with rather some narrative detail, both Clinton and Al and Tipper Gore on the island—and in fact Clinton, apparently with the acquiescence of the Secret Service, flying in a helicopter piloted by Epstein's girlfriend, an amateur pilot. Epstein's lawyers say that not only have Clinton and the Gores never been to the Epstein Island, but this fantasy is easily disproven by dsecret service records, which would seem to make the memoir opportunistic or hallucinatory fiction.

The FBI, in a recent filing, has argued that Roberts should not be party to the suit against the government because she refused to cooperate with the government in its investigation in 2007, hence has no standing as a victim. (At the same time, the FBI included her on the list of 40 victims with whom it mandated Epstein reach a settlement.)

It is hard to find a more hyperbolic intersection of media and lawyers then in Epstein's case.

Edwards, over the six years of his law suit, tries to depose Clinton, Donald Trump, and Dershowitz—almost all of his targets coming directly from the original Vanity Fair and New York Magazine articles about Epstein.

In addition to Prince Andrew as a British hot button, first connected to Epstein through Roberts' interview with the Daily Mail in 2010, Clinton takes on a new role as Hillary spoiler through his connection, real or imagined, to Epstein and sex slaves.

Almost everybody identified in any story about Epstein is approached by other media seeking to write about Epstein, often with financial incentives offered in exchange for a tale.

No new stories or even new details emerge. Every aspect of the current story is based on court filings describing events that may or may not have taken place prior to 2007. It's as though a kind of ground-hog day of moral opprobrium, a desire to repeat and to savor a new the old details.

A recent Reuters story identified a charity that Epstein has not given money to in 15 years that said if he does give again, they would give it back.

The world cleanly divides, with Epstein (and friends) behind secure walls and the Mail and social media and upholders of new norms ever more incredulous and apoplectic that Epstein not only appears free but prospers too. Although he has spent more than a year in jail and paid out what may be as much as $20 million, he yet seems somehow to have not been sufficiently punished—that worst sin of all. He is the unrepentant catch all of up-to-the-minute badness: the financier whose wealth is a product of Wall Street math rather than hard work; a rich middle-age white man who not only parades his wealth and entitlement, but has a Peter Pan complex to boot; an insistent Playboy in a correct and prudish world—someone who somehow didn't get the memo about vast changes in mores and culture.

When I suggested recently that one obvious way to blunt the animus would be to get married, he said he'd rather go back to jail.

He is Calvin Harris's song, It Was Acceptable in the 80s, come to life.

This is all, of course, a Gatsby-like tale: An enigmatic, and strangely appealing figure, able to invent and inhabit his own world is a mystery to try to decipher. Of course Gatsby in New York Post and Daily Mail parlance would likely be just a freaky financier too.

And this story is, in its way, about the limitation of journalism, in which the most compelling parts of the tale—Epstein's ambitions and impulses would be well suited to a long running cable drama—need to be sacrificed not just to moral certainty but to a rather preposterous fantasy of moral certainty.

Anyway, I hope I get invited back to Jeffrey's house soon.

It's an absurdly vast house, among the largest in Manhattan, but the dining room is windowless, creating a hermetic or stop-time sense, broken only by the household staff ferrying in time-of-day-appropriate foods and beverages.

In sweatshirt, draw-string pants, palm beach slippers, and half glasses, Jeffrey Epstein sits at the head of the table. He spends most of his day in the dining room in front of a laptop and beside a row of reading glasses (there are a lot of them in case, apparently, he misplaces a pair, but being quite meticulous he never does) advising or instructing a startling collection of the rich and powerful, who are slotted in on an hourly basis.

The apartness of Epstein's dining room might seem to offer some buffer for a super rich man who attends to even more fabulously rich men (and the occasional extremely rich woman). But with the paparazzi often posted near by, the outside world seems dangerously close too. Once I arrived for a visit and found several police cars blocking the street and thought the worst—they'd come for Jeffrey. But it was a security detail for a controversial head of state who was visiting him.

His subject, on this morning in early November during a set of interviews he's agreed to have with me about his life and views, is "hyper wealth." His subject is always wealth—how capital should react to the given global political, economic, and cultural moment. The baronial quality of the dining room is disturbed only by an ever-present white board, whereon he scribbles calculations and notes, a tool he uses to conduct one of the world's most rarified economics class, attended often by the world's finance ministers and foremost economists.

His stock in trade is not precisely the making of money, but the issues that arise when money, at a heretofore unimaginable rate, makes itself, altering many basic economic, social, and personal calculations. He recounts a dinner he had two nights before. The scene is, like much of what he does, a conspiracy theorist's fantasy. The six men at this dinner, all technology entrepreneurs, represented, together, several hundred billion dollars and they are deciding how to use it to alter the world to their liking.

"In the past, only governments had this kind of money, money of a reality altering scale," says Epstein conversationally, but making a pedagogical point. "In fact, it used to be that the rich, reaching a certain point of philanthropy, merely hoped to help make the world a better place, now they want to change the world. Rockefeller and Carnegie were, as examples of social-engineering philanthropy, unique. They alone had such resources and will. Now you have legions of people who have to give away vastly larger fortunes than Rockefeller or Carnegie had at their disposal, or might even have imagined.

"Except that it's actually hard to give away this kind of wealth, without unintended consequences that can cause more problems than you're solving."

Epstein's long-time business thesis is that the rich know very little about money. They may know about their own businesses, but the great sums that are the result are ultimately an afterthought and demand an entirely different sort of intellectual discipline. The Forbes 400, says Epstein, not immune to an amount of wonder, increased their wealth by $500 billion last year, meaning, in effect, that on average every Forbes-list billionaire makes more than another billion every year. And, points out the 62-year-old Epstein, they will almost all be dead in 40 years, most well before that, meaning $4.2 trillion, compounding everyday, will have to be given away. "So, to understand the future, what you have to begin to do is follow the money, not in Watergate-like terms backwards, as in who has gotten it, but forwards to where it will go and who will get it."

Epstein can find himself echoing aspects of Thomas Piketty on the inequities of the accumulation of wealth ("the divide is between people with assets, which appreciate, and people without assets, who fail to advance—that is, of course, the miracle of compounded interest"), except for the fact that Epstein, knowing the rich, understands a point that Piketty doesn't: "Nobody, *nobody*, wants to give it all to their children. Everybody now has the modern appreciation that one of the curses of great wealth is that it can make your kids weird and fucked up."

Epstein's position in this private allotment of a decent fraction of the U.S. Gross Domestic Product is not as a philanthropist but as a sort of adviser or guru or brain—a rich whisperer—making him, in addition to rich himself, arguably among the most influential people you've never heard of.

Though, likely, you have heard of him—not for his prowess with high abstraction, but for a scandal of such luridness that he is, for a great many, the poster child for the lawlessness of privilege. He is *that* Epstein, sent to jail in 2008 in Palm Beach on a prostitution charge, based on the complaints of over a dozen underage girls, with, ever since, periodic reminders of his notoriousness in the tabloid press.

And yet the mighty and powerful, disregarding his sex offender status, have still beat a path to his door. It's a fantastic conclave of influence in his dining room: financiers, billionaires, heads of state, economic ministers. This includes, hardly least of all, Bill Gates, for whom Epstein has become a key advisor. [TKTK WHAT HE IS DOING FOR THE BILL AND MELINDA GATES FOUNDATION.]

Hence, as part of an effort to get "out in front" of the notice that might be expected to greet Gates' public association with him, Epstein—who I first met in 2002 as part of a group of TED partcipatants he was ferrying on his plan to west coast—agreed in early fall to these on the record conversations with me.

When we began to talk for this piece, Epstein was still hoping that, beyond his private confines, he might finally, five years after his release from prison, be able to start rebuilding his public reputation.

Then, just before the New Year, Epstein forwarded me a heads-up email that Alan Dershowtiz, one of Epstein's longtime friends—they have a bickering brotherly relationship—and occasional legal advisors, had received from a reporter at Politico. The Politico reporter had been following Epstein-related court filings and found a new one added to an old lawsuit with some rather jaw-dropping claims. The civil filing, based on claims of one of the plaintiffs, purported to connect a catch-all of bold-faced names associated with Epstein more than a decade ago, including Dershowtiz and Britain's Prince Andrew, to a "sex slave" ring, and . claimed that Epstein's alleged sex slaves had been forced on Epstein's command to have sex with Dershowitz and the Prince.

Epstein, who sometimes seems to have an out-of-body attitude toward his own fate and bad press, said that while the claims were ludicrous—putting Dershowitz among sex slaves, he said, ought to point out just how ludicrous—he thought it might provoke "quite a show." In short order, Prince Andrew's alleged involvement sent the U.K. into tabloid frenzy (even the normally sniffy Guardian, in full anti- royal and anti-billionaire fever, joined in), which then effectively exported the story back to the U.S., where Epstein's now-long-defunct connection to Bill Clinton, suddenly became a shadow over Hillary, and hence big news.

"I told you," said Epstein.

There is Epstein in his inner world, trying, ostrich like, not to look out. Little beyond his strict realm seems palatable or even all that familiar to him. Not long ago, when I met him for lunch in the West Village, he noted that he hadn't been out to lunch in a restaurant in 10 years.

Then there is the outside world pressed to the glass, appalled and titillated by the monster inside the big house, with press accounts recycling the mysterious billionaire mythology—a man of vast and unsourced riches living in a parallel universe of absolute entitlement—and offering brief glimpses of him stepping out of the house (the same photos endlessly republished), and suggesting depravity inside.

In fact, the life in the house, without wife or children or conventional domestic demeanor, in some way conforms to the most scripted fantasies: a life somewhere between Daddy Warbucks and Eyes Wide Shut. There is indeed a group of young women who act as Epstein's support staff and companions. Some have worked for him for many years, marrying, having children, and continuing as part of his business and household infrastructure. One woman, on an afternoon when I was there, had just returned from an around-the-world honeymoon that Epstein had arranged for her. Some are, or have been, his romantic interests. His present girlfriend, whom he met four years ago at a dinner party in New York, is in dental school. One former girlfriend, Eva Andersson Dubin, a Swedish model and Miss Universe finalist whom Epstein has known for more than thirty years, became a doctor—Epstein sent her to medical school—and married hedge funder Glen Dubin. Together they finance the Dubin Breast Center at Mount Sinai Hospital. Most of the women at one time will travel with Epstein to his other floating residences—the ranch in New Mexico, a vast apartment in Paris, the island in the Caribbean, the house in Palm Beach.

Epstein will sometimes move a meeting that starts in his dining room outside for a walk in the park—his idea of going out to lunch is a Sabrett's hot dog. The various girls in the house become the accompanying entourage, as though something out of an 18th-century French court.

But the Hefnerian prurience can also be quite businesslike: poised young women in a mansion on the Upper East Side with various office responsibilities are really not that different from any of the art galleries in the surrounding neighborhood. They mingle freely with his powerful guests, not so much as hostesses—or, in tabloid language, harem-like "sex slaves"—but as attentive students (which, of course, might be regarded as having its own fetish-like attraction). Epstein explicitly denies that there is an sexual quid pro quo. ("There an expression that if you're fucking someone you work with they can come in late. It's not my expression, it's Jimmy Goldsmith's.") Still, the constant attendance of so many comely young women—especially given his past conviction—seems so outside of conventional living or staffing or social or romantic relationships that it is hard to describe in a straightforward or straight-faced way. And while it may be part of the appeal for the men who come to visit Epstein, it is as well a pecularity they put up with in order to spend time with him. It sometimes seems part of Epstein's implicit challenge: not just look at me, but do you even believe what you see? Or it seems he is just oblivious to what others are thinking. A willful and perhaps fatal tone deafness.

The Epstein house/office is, by careful design, exclusive and clubby, part hang out, part secret society. Along with the difficulty in explaining why, even after his jail term, the rich and powerful have continued to so eagerly solicit him, it's also notable in the fixed hierarchy of who comes to whose turf, that when they went to see Epstein, they tend to comes to him.

He's created a world and you come to it.

A week in late September—U.N. week as it happened—began, over Sunday lunch, at Epstein's house with a colloquial for billionaires: Gates, Mort Zuckerman, the real estate billionaire and own of the Daily News, and Peter Thiel, the PayPal co-founder and early Facebook investor. [DISCUSSION?].

Epstein, preternaturally responsive to both the price of oil and to the politics of the Middle East, entertained that evening a delegation from Qatar, including Sheikh Hamad Bin Jassim, the foreign minister. Hamad , indeed, lives across the street in a similarly furnished house—he and Epstein have the same decorator. Epstein, in his relaxed and amused manner, kept prodding: “Why are you financing the bad guys? What do you get out of that?” The Qatarians, in some mild diplomatic discomfort, seemed most worried that their bid for the World Cup might be compromised by bribery allegations.

At 9 the next morning, Epstein was joined for breakfast in the dining room by Reid Weingarten, who’s represented, among other fat cats in trouble, Worldcom’s Bernie Ebbers and Goldman Sach’s Lloyd Blankfein, and is one of attorney general Eric Holder’s closest friends. Weingarten, hoarse, with a cold, and dejected, is just back from a failed defense of former Connecticut Governor John Rowland.

After a blow by blow of the trial, there’s a discussion of the Qartarian’s visit—Epstein is serving chocolate made from pistachios grown on the Sheikh’s farm—and speculation about who actually controls ISIS, with Weingarten arguing that the Turks are not getting enough scrutiny (he posits that ISIS is part of their proxy war against the Kurds). There is, in Epstein’s dining room, always an alternative version of world events—” “perception versus reality,” says

Epstein, “not to imply that one necessarily has greater weight than the other.”

“Why?” I asked Weingarten, when Epstein briefly steps out of the room, “do so many people keep coming back here, everything considered.” This was before the most recent blowup but has been an obvious question ever since his stint in jail.

“Why we camp out here? I guess because there’s no place like it.”

Epstein summons in the next person cooling his heels in the ante-room. It’s a young man named Brock Pierce, a former child actor and dotcom high flyer—a principle in a gaming company called DEN, a notorious dotcom burnout, with its own sex scandal—who now describes himself as the “the most active investor” in the Bitco and programmable currency space..

Epstein shortly checks to see if his next appointment is here to join us. Seconds later, Larry Summers, the former treasury secretary and President of Harvard, enters the dining room. Summers, off Diet Coke, digs deep into the Sheikh’s chocolates, then focuses in on the Bitcoin investor.

“Okay,” he says, after listening for a bit to Pierce and his update on the rapid Bitcoin price swings,, “I have opportunities here. But an additional feature of my decision problem roughly speaking is that the worst that could happen to you is that you could lose all the money you put into it. Whereas, I could go—I mean I don’t look that great now—but I could go from being seen as a figure of some probity and some intelligence to being a figure of much less intelligence and much less probity…"

"Well," says Pierce in some dramatic understatement, "you are going to have some low quality characters playing early in the space…"

That evening, there's a small cocktail party, which includes the former Prime Minister of Australian, Kevin Rudd, and Thorbjørn Jagland, the head of the Nobel Peace Prize Committee, who offers an affable, but generally scathing, critique of U.S. diplomacy (and a brief defense of Obama's Peace Prize award) and to whom Epstein offers a ride back to Europe on his jet.

The next morning, it's Ehud Barack, the former Israeli Prime Minister, for breakfast. Barack is, over his omelet, able to defend both Obama and Putin. Then a high ranking official from the Obama White House (whose name I am asked not to use).

There follows the former head of the UN Security Council, Hardeep Purie, and then head of the central bank of Kazakhstan, Kairat Kelimbetov.

Then Nathan Myhrvold the former chief technology office at Microsoft. Then Martin Nowak, a Professor of Biology and Mathematics and Director of the Program for Evolutionary Dynamics at Harvard, the institute that Epstein has funded with $30 million. Part of Nowak's research has to do with trying to "describe cancer mathematically." (Epstein preempts Nowak's explanation : "Think of cancer the same way as you think of a terrorist group. The NSA has been able to thwart a great number of terrorism acts by intercepting communication signals from one terrorist to another. That same dynamic, a form of signal intelligence, of finding a terrorist in Europe, can be used to intercept communication between cancer sells. Cancer cells merely communicate in protean code rather than electronic code. If you can decode what the signals are saying you can jam those signal between terrorist calls—essentially wipe out their cell phones. Likewise if you can decode biological signals you can jam them too, that's the holy grail.")

Then Richard Azel, a Nobel prize winner in physiology. Then Ron Baron who has $26 billion under management in his Baron Fund. Then Josh Harris, the co-founder of Apollo Global Management ($164 billion under management) and owner of the New Jersey Devils and the Philadelphia 76ers.

In some sense, what goes on at Epstein's house confirms everyone's worst fears about power and the powerful: they are all in a secret and shared conversation. The world runs on insider information. Inside Epstein's dining room, it remains a man's world—a rich man's world—in which women exist as little more than room decorations or helpmates. Indeed his salons tend to offend most aspects of reconstructed gender and political sensibilities.

The rich perhaps come here, risking public opprobrium, not to mention the censure of their wives, because there aren't, in this leveled age, too many places where they don't have to pretend that they are something other than rich and powerful. The conversations at Epstein's are the conversations, I suspect, that rich men dream of, but in the real world are actually hard to have.

That's the implicit Epstein view of the world, not, in most venues, comfortably expressable, not in positive and practical terms anyway: that the rich do have quite an autonomous control over events, and the wherewithal to effect the outcome of what they can't entirely control. Epstein faciliates that conversation without guilt or worry, and, in fact, with great enthusiasm. His lack of PC--the rich man's world he has created is flagrantly non PC--is a serious part of the draw.

Wealth is the bond and the experience. Once, at lunch in the Epstein dining room with Bill Richardson, the former Governor of New Mexico, and past Presidential aspirant, when Epstein left the room for a few minutes, I asked the obvious question, the one everybody asks each other, "How did *you* meet Jeffrey?" Richardson seemed surprised: "Jeffrey," he said, as though stating what should have been perfectly obvious, "is the biggest landowner in New Mexico."

Epstein has a yet more structural explanation as to why, after prison and with continuing tabloid infamy, he can maintain his valued place. It comes back, not unexpectedly, to the nature or the needs of money: "At a certain level of finance, almost everyone is allied with an institutional interest. You are part of government, or you want to be in government, or you are connected to a bank or other portfolio, or you have key relationships with certain corporations or industries. Because of my situation, I have none of that. I have no institutional ties which makes me in some sense one of the few wholly independent sources of information and actual honest brokers. That's the usefulness of disgrace."

It's also true that Epstein's circle might be more forgiving of disgrace than the rest of the world. Many of these men have themselves been on the wrong side of a negative story or a scandal or a damaging public lawsuit. Any hyper-prominent person might run afoul of prosecutors, the political moment, the media, or the Internet hoi polloi. And they know that the media's (or prosecutor's) version of events seldom square's with their own. In that way, they are, even with jail time, quite willing to give Epstein the benefit of the doubt. For some of his visitors, there's a clear order of identification: there but for the grace of God. For others tthere is even a wry sense of humor about it. People who know Jeffrey exchange "Jeffrey" stories. "That's Jeffrey," says Mort Zuckerman, (whose paper, the Daily News, is ever vitriolic in its coverage of Epstein), with a twinkle in his eye and obvious enjoyment, to tales of Epstein escapades. It is an outréness that Epstein seems to cultivate. In his Paris apartment, 10,000 square feet on the Avenue Foch, a neighborhood otherwise occupied by foreign potentates, there is a stuffed baby elephant in his living room—that is, the *elephant in the room*. (Epstein says too it's a reminder that elephants have 23 copies of tumor suppressor genes and humans have only 1.) The single book on his bedside table is Lolita (he is, beyond the joke, a great Nobokov fan).

And, too, he seems often to be right. Since I began working on this piece in September, Epstein predictions about the price of oil, yen, ruble, and euro have all born out. If I had invested $100,000 the way Epstein said I should in early September, by the end of January I would have made $2.4 million. (Alas, I did not invest.)

At any one moment, he is making a series of bets for himself and others--very much not as a workaday hedge fund, and much more as a privileged association. Money is always about the club it gets you into.

Most everyone who is now of a certain age and ambition and status grew up in, and found they were temperamentally suited to, the era of wealth that started in the late 1970s. A meritocracy on steroids, or, as Vanity Fair would baldly dub it, the new establishment, an increasingly parallel world, a self-invented one, at further and further remove from the ordinary one. Epstein's is just one version.

Epstein often tells, with some obvious marvel, his middle class to riches tale: born in 1953 in Coney Island, father worked for the city's Parks Department, mother a housewife.

The captain of the math team at Lafayette High school in Bensonhurst, he went on to Cooper Union where the tuition is free. He dropped out after two years and began taking classes at the NYU's Courant Institute of Mathematics. Then, without a college degree, hence by a slight of hand, he got a job teaching math and physics at Dalton in 1974. (A few years ago, during a chance encounter with a former Dalton math department chairman, Margo Gumport, I asked her about Epstein. She said he was the most brilliant math teacher at Dalton in her 50-year career and that she had often wondered what had become of him.)

Dalton was his first exposure to the wealthy. They have, he concluded, just as many problems as the people in Coney Island, but different ones, almost invariably involving divorce and money. "I found it interesting as a science experiment," he recalled recently as we chatted about his life. "It did not really involve me. I could just stand back and watch."

Dalton fathers were attracted to him as a young man clearly on the make. Punch Sulzberger, the publisher of the New York Times, and a Dalton father at the time, tried to recruit Epstein to come to the Times. (Epstein recounts a story of riding with Sulzberger in his wood paneled station wagon to the family's country estate and Sulzberger talking to the chauffer on a phone from the backseat to the front.) But he wasn't interested in being a journalist.

In 1976, another Dalton father, asking "wouldn't you rather be rich than be a teacher?" introduced him to Bear Stearn's chief Ace Greenberg, a conversation Epstein recounts as this:

Greenberg: "Everyone tells me you're super smart in math and you're Jewish and you're hungry…so why don't you start working here tomorrow?"

Epstein: "What?"

Greenberg: "If you're supposed to be so fucking smart, don't you understand English?"

Epstein: "Ok. Count me in."

Hence, Epstein, like many in the late '70s, arrived on Wall Street. By the fortuitous luck of being there at that point in time, Epstein was propelled by a much more explosive form of upward mobility than had ever before existed. With a facility for mathematics as well as for getting along with wealthy men, he got rich at an even faster rate than so many others.

He moved into the penthouse of a new building at 66th Street and Second Avenue—still in the shadow of the Maxwell Plum era when the 60s on Second was the glamour address—a building that was, he says as a fond memory, full of "actresses, models, and euro trash." (It would shortly become the Studio 54 era, where Epstein, who has, proudly, even militantly, never had drink or taken any drugs, was a regular).

If on one side of Wall Street there were the salesmen (the Wolf of Wall Street model), on the other side there was a new sort of finance type able to embrace a level of acute abstraction. “In the past,” says Epstein, “investing was all about reputations and relationships. You invested in a company on the basis of who was running it. Did they have integrity? Were they married? Good family men? It was a ‘50s mentality. But in the mid ‘70s options started to be traded. In essence, the first formal derivatives. The movement of this instrument is not directly attached to the stock price. The world of investing began turning from relationships to math. In a sense I didn’t really make money as much as I tried to create it. This was intellectual activity of a fairly high order.”

Intellectual activity aside, he met Helen Gurley Brown and she made him Cosmopolitan Magazine’s Bachelor of the Month in 1980.

“What,” I ask, “was your social life like?”

“Well, I was a playboy.”

“That’s all? Not looking to get married?”

“No. Never. I never wanted to get married. I enjoyed sex. I adore women. I wanted freedom. I was attracted to the rich because of their freedom. But I wanted also to avoid their burdens. And I didn’t want to hide. I didn’t want to be a hypocrite. I wanted to be free. I was not remotely ambivalent about what I wanted: to be free. That was the reason to make money.”

His rise at Bear Stearns was a swift one. And he soon became the protégée of Jimmy Cayne (also hired by Ace Greenberg on a whim—he met him in a bridge game), who would go on to run Bear and to lose his fortune in Bear's 2006 collapse). Epstein's leave-taking or ouster from Bear was the result of politics, envy, overreaching, or a securities violation, or…unclear. But, no matter, when he left in 1982 he took with him billionaire clients, including Marvin Davis, a real estate developer who owns Twentieth Century Fox, and Herb Seigel, a major media investor in the 1980s. At this point, Epstein was dating Morgan Fairchild, a television star in the new mega-rich-family soap operas, Dallas and Falcon Crest.

The Concorde phase of his life coincided with the Concorde phase of the 1980s. If the '80s were happening pell mell in New York, they were happening at double time and catch up speed in London. Thirty-year-old Epstein was living a Lifestyle of the Rich and Famous (he befriended the show's star, Robin Leach), at English shooting parties and country estates with Saturday night black tie dinners, where he was meeting the over-the-top families of Europe.

"I didn't take it seriously," Epstein recounts. "I was not caught up in it. I wasn't trying to make a billion dollars. There was no ultimate goal. It was just fun to meet smart people, interesting people. But no long-range plans. Often no short-term plans either. I would head to Kennedy and, on the theory that most important events in one's life are serendipitous, I wouldn't decide where I was going until I got there."

At the same time, he was developing a perception, or, at least a market differentiation: the hyper wealthy had different problems than the very wealthy. Dealing with a billion dollars was different from dealing with $100 million. “If you had a billion dollars I would think the last thing you should be worried about was money, in truth money was what you most worried about. How to make more of it, how to give away more of it, how to protect your children from it, how to hide it from your wife or husband, how to minimize your taxes on it. The traditional wealth service structure, an accountant, and investment advisor, a personal lawyer, and an idiot brother-in-law, became hopelessly outdated as amounts exponentially increased.

“You can’t spend a billion dollars, you can just reallocate it to a different investment class. And you can’t give away a billion dollars without a vast staff, in effect going into the business of giving away money, yet another business you are likely to know little about.”

For a period, one part of his activities, he says, was recovering monies for countries looted by exiled dictators or military strongmen. Then, in his telling, he was representing a series of vastly wealthy people and families—not just doing their bidding or their investing, but helping them to navigate the ambitions of their wealth. If they had big dreams before, it’s nothing to what they can have now.

If early in his career he might have seemed like a sort of George Peppard (there’s a physical resemblance) in Breakfast at Tiffany’s, a charming hustler, later he’s George Peppard in Banacek, a smart and astute operator.

At just about this point in the narrative, the incredulity about Epstein began to circulate in social circles. Epstein had acquired the major symbols of wealth but without position, public holdings, or obvious paper trails. His is a questionable substrata of wealth, without institutional credentials or bona fides. He's a freelancer. That's the rub: he doesn't work for anyone.

There is no clear alternate narrative. No one is accusing him of anything, except sometimes guilt by association. (In addition to Robert Maxwell, who will be accused of fraud, there's Steven Hoffenberg, briefly a New York high flyer, who went to jail for a Ponzi scheme, for whom Epstein acted as a consultant—along with, he points out, Paul Volcker.) But the characterization persists: if it's not clear, it must be murky. Sure, Goldman Sachs partners and tech geniuses, they might have stratospheric wealth, but what to make of a Coney Island, Zelig-like no-namer?

In 1994, just at the moment when Prince Charles was on television acknowledging his love for Camilla Parker Bowles, Jeffrey Epstein was sitting with his arm around Princess Diana at a dinner at the Serpentine Galley in London (Diana wearing her "revenge" dress that evening). Graydon Carter, in his second year as editor of Vanity Fair, was also at the dinner. Epstein's rise and Carter's rise are not, with a little critical interpretation, that different. Both are a function of the age of new money, both are helped by strategic relationships with the exceptionally wealthy, both have made themselves up. To say that Epstein, in the company of the Princess, stuck in Carter's craw would be an understatement. Epstein became one of the "what do you know about him" figures in Carter's gossip trail—a story waiting to happen. Carter advised me not to go to Epstein's house or accept a ride in his car least I risk being blackmail. ("For what?" I asked Carter. "You can't even begin to imagine," said Carter.)

Epstein is private and secretive, but grandly so. He joined the board of Rockefeller University. He was suddenly on the Trilateral commission, that cabal of business people who fancy themselves, and who are fancied by conspiracy buffs, as running the world. He bought, from his client Limited Founder Les Wexner, the largest private house in Manhattan. (Rumors will continue for many years, that Wexner owns the house and Epstein is just squatting in it—an 18-year squat.) He bought an airplane. Then another. He expanded his holdings in New Mexico. He began a Xanadu-like refurbishment of his Caribbean Island.

He befriended Bill Clinton in his new after-office life--and that. And would prove to be quite the fatal pairing.

The post-Monica Clinton, now having pardoned the on-the-lam financier Marc Rich—at this point, before his own rehabilitation, Clinton really is the world's ultimate sleaze ball—was suddenly being ferried around in the jet of…*who* exactly? The New York Post was the first to take formal media note of the Clinton-Epstein connection, hinting at a sex and money bromance. “I suppose travel with Clinton changed the arc of my life,” Epstein tells me. “There were, I knew, lots of obvious reasons not to do it, but having the ability to spend 100 hours with a former president just doesn’t happen to many people.”

I met Epstein around this time, on the flight out to TED. (Epstein had become an active backer of advanced scientific research and a TED fixture.) A small group assembled at the private plane terminal at JFK, most of us unfamiliar with our benefactor, and as we headed in the direction of the discreet private plans we were gently pointed to our ride: Epstein’s 727.

It was like something out of a men’s magazine fantasy of the luxe life. The quiet of the plane, engineered into acoustic perfection, seemed spooky. Epstein was accompanied by three young women who were witty, poised, helpful, as well as powerfully alluring. And Epstein, tanned, relaxed, with a wide open smile, was an attentive host, soliciting every guest’s story and views. (One more thing about this trip: Google founders, Larry Page and Sergey Brin, with their company still in its infancy, came out to see the plane on the Monterey tarmac and, with a few other Googlers, literally ran whooping from one end of the plane to the other. Then they described for Epstein, in what I cannot now remember was a put-on or entrepreneurial brainstorm, a brand extension in which they would market a line of Google bras with the Os as convenient cups. In fact, the name Google, they said, was invented out of the belief that men would focus on a word with two Os in it.)

Not long after this trip, Epstein's assistant called to invite me for tea at his house in New York, where Epstein, with what seemed to me little understanding of the subject, began to ask me about media—the upside, downside, and nature of media coverage. New York magazine was then soliciting him for a profile, as was Vanity Fair, who had assigned the British journalist, Vicki Ward, to the job. Both profiles—New York's by Landon Thomas—pivot on the Clinton connection and detail the same quandary, how a man without clear institutional bona fides nevertheless achieved such wealth and influence. Epstein, sensing that he might be exposing himself, called Carter and said he was having second thoughts about being a public figure.

"Then you should live in a two bedroom apartment in Queens," responded Carter.

And then the real troubles began. Epstein, in man-who-can-have-everything fashion, has, for many years, ordered up a daily massage following his workout sessions.

"Often these were massage massages," says Epstein matter of factly, "but sometimes these were happy ending massages, especially in Palm Beach, where there are many massage parlors—'Jack Shacks,' they're called—that do outcalls. There was no sex. An often there was no happy ending. Often I would be on the phone for the entire massage. There were however a lot of massages and a lot of girls, with one girl recommending others." He says all this in a straightforward manner that seems utterly tone-deaf to its effect, as if he suffers from a sort of cultural autism.

After Epstein's round of publicity and widely touted association with Clinton, the stepmother of one of the massage parlor girls who went to Epstein's house, identified as "SG" in court documents, called the police. The police interviewed the girl [WHO WAS HOW OLD AT THE TIME?] who supplied the names of other girls, some of whom were younger than 18.

In the end, the police tracked down 18 girls—nine of whom were under 18 [THIS IS IMPORTANT: HOW OLD WAS THE YOUNGEST?]; the others were in their 20s and 30s; one woman was in her 60s—a number of whom gave statements describing scenarios not terribly different from Epstein's description above, except in this version of events a cold and forceful Epstein demanded that unwitting juveniles perform repulsive acts on him. (Although the nature of the allegations will dramatically grow into threesomes and forced sexual encounters, nobody at this point alleged anything more than Epstein masturbating.)

A shadowy rich man, friend of the louche and disgraced president, at all times surrounded by a retinue of young and gorgeous women doing his bidding, is found to have gathered a network of wrong-side-of-the-tracks Palm Beach girls to provide him with weird sexual services. (It somehow reads weirder that he doesn't have sex with them.) To boot, his former girlfriend, Ghislaine Maxwell—the daughter of the disgraced Robert Maxwell—encouraged at least one of the girls to come to Epstein's home (and is henceforth known as the procurer or madam for Epstein and, later, his friends). It certainly doesn't look good.

Epstein called in Dershowitz, who flew into Palm Beach to put the local authorities in their place—alienating Palm Beach officialdom—and, further amping up the profile of the case, also brought in Roy Black, the famous criminal attorney who defended William Kennedy Smith in his rape trial in Palm Beach. Epstein might have just been hit with solicitation charges and paid a fine even though some of the girls were underage; prostitution charges in Florida (as in most places) have no age limits and the Palm Beach grand jury proposed solely a solicitation charge. But Epstein's flamboyance and his friendship with Clinton invited the scrutiny of the Bush FBI, and ultimately Epstein and his legal team decided to go for a plea deal. The result was a baroque set of agreements with both the Feds and Palm Beach county, which mandated jail time (Epstein was sentenced to 18 months, of which he served 13—nearly all Florida prisoners serve only 70% of their officially sentenced time) and sex offender status. The deal also provided for an unusual, if not unprecedented, arrangement by which he agreed to pay the legal fees for 40 girls specified by the FBI in civil suits against him and not to oppose their claims, resulting in an overall settlement costs that may be as high as $20 million.

It is in part this impossible-to-explain weird-justice outcome that has made some people think he was covering for someone else--one person in particular.

"So?" I ask directly, one day late in our interviews. "Explain this. It does make it look like you were covering for you-know-who."

"Covering?" He chuckles. "First, by the way, you-know-who was never there. Never came to the island. Not once. Not ever. But you're right, the settlement was preposterous. Nobody has ever heard anything like it. But while it was breathtaking and perverse and, well, Kafka-esque, it was also straightforward: you sign this or else we will federally indict you in ways that will threaten your property, the people who work for you, and put you in jail for ten years. I took the deal."

A bit more baroqueness: one of the lawyers representing some of the plaintiffs, Scott Rothstein, would also go to jail for recruiting investors to pay for these suits on the fraudulent basis that settlements had already been reached and that many of the listed women had agreed to take reduced immediate cash payments.

Epstein got out of jail in 2009. The experience does not seem to have much dented his general bonhomie. One evening over dinner he and the former director of ports in the semi-rouge state of Djibouti, who had fallen afoul of the regime and found himself in prison, exchanged jail stories--they agreed, not as bad you'd think. Epstein, having done his time, moved almost seamlessly back into his life, to the shock-shock of tabloids whenever they seemed to be reminded of his existence (notably, when Epstein's payment of Fergie's debts slipped out, likely leaked by Fergie herself).

Some things changed. While surprising few others dropped him, the Clinton's did, an irony of the present tabloid interest in his old address book with its many Clinton contacts. And his sex offender status transformed him from libertine and playboy to paedophile, a distinction in the current climate it is almost impossible to argue.

While he has reguarly entertained PR proposals aimed at his public rehabilitation, until Gates prodded him, and then until this recent renwed tabloid fever, he had concluded that he was perfectlysatisfied living behind high walls and in his own exclusive club.

Even now, this new Dershowitz-Prince Andrew chapter seems like a parralel distubance rather than something that is actually effecting his world. "Bad press is not something actually bad," he notes, trying to balance perception and reality.

And, indeed, the tabloid narrative and his own narrative rather define wholly separate universes.

The, the ongoing case, with the filings that introduced the Dershowitz and Prince Andrew allegations, he notes, was brought by the imprisoned Rothstein's former partner, Brad Edwards, part and parcel of the settlment industry that has grown up around him.

This new chapter relies entirely on the testimony and the memoir—excerpts of which were published by the Daily Mail—of Virginia Roberts, who claims that Ghislaine Maxwell met her, when she was 17, at Donald Trump's Palm Beach resort and got her a job in the Epstein house, which she held for several years, traveling in the Epstein entourage. It is Roberts—who refused to cooperate with the FBI's 2007 investigation of Epstein—who has propounded the "sex slave" narrative. She claims that "massage" was a code word for sexual acts, and that she worked for Epstein for TK years for $TK, having sex with him and his friends, and reporting on the details to Epstein so he would have blackmailable details about them. In the laundry list of big names, she also claims to have met (though not had sex with) Bill Clinton and Al and Tipper Gore through Epstein.

This is all, says Epstein, utterly false, including that she met Clinton and the Gores, who Epstein says he has never met. Indeed, there has been no corroboration of the Roberts charges nor any new evidence or further prosecution and Dershowitz is suing her for libel. Roberts who was part of the original settlement is now seeking an additional suing Epstein for an additional $50 million from Epstein, and planning a book on her life and the scandal.

It is a curious attribute of his character that, other than perhaps being more circumspect about what legal advice to follow, Epstein would not have done anything differently. (When I suggested recently to Epstein that one obvious way to blunt the animus bearing down on him would be to get married, he said he'd rather go back to jail.) His life, living it as he wants, seems to him to be an extraordinary accomplishment. Being on the wrong side of morality, custom, politics, feminists, the media, that's just a bit of bad luck.

And it is perhaps this attitude of his that irks his critics the most. Although he has spent more than a year in jail and paid out what may be as much as $20 million, he yet seems somehow to have gotten away with it—that worst sin of all. He is the unrepentant catchall of up-to-the-minute badness: the financier whose wealth is a product of Wall Street math rather than work; a rich middle-age white man who not only parades his wealth and entitlement, but has a Peter Pan complex to boot; an insistent Playboy (excuse me, peadophile) in a correct and prudish world—someone who somehow didn't get the memo about vast changes in mores and culture.

But Epstein's friends—and I think that is, in the end, the best word for the powerful people who orbit him—are willing to take him as he comes. Epstein is their confidant. Not the only nexus of them, but one of them. Dr. Epstein. Lay on my couch. As he is everybody's confident, everybody becomes his confident. This is a back and forth, a power loop. His expertise is knowing what other people know. Which surely offers a unique sense of confidence that it is possible to understand how the world works. And in a time of such radical flux and existential instability, everybody wants to seek out someone who might have some answers or at least make you feel like he does—even, and maybe especially, the rich. The fact that he's an outsider, even a pariah, nobody you have to fear, in his own way a secret (and all powerful people like secrets) is—if you're not caught in his company—reassuring too.

In the last days of my interviews with Epstein, he was called by a particular world-stage individual, indeed among the richest and most powerful—proudly louche himself—who, feeling out of his depth in a world of crashing oil prices and wild currency fluctuation, had come to believe he might benefit from some private tutoring. And so the math teacher got on his plane.

It’s an absurdly vast house, among the largest in Manhattan, but the dining room is windowless, creating a hermetic or stop-time sense, broken only by the household staff ferrying in time-of-day-appropriate foods and beverages.

In sweatshirt, draw-string pants, palm beach slippers, and half glasses, Jeffrey Epstein sits at the head of the table. He spends most of his day in the dining room in front of a laptop and beside a row of reading glasses (there are a lot of them in case, apparently, he misplaces a pair, but being quite meticulous he never does) advising or instructing a startling collection of the rich and powerful, who are slotted in on an hourly basis.

The apartness of Epstein’s dining room might seem to offer some buffer for a super rich man who attends to even more fabulously rich men (and the occasional extremely rich woman). But with the paparazzi often posted near by, the outside world is dangerously close too. Once I arrived for a visit and found several police cars blocking the street and thought the worst—they’d come for Jeffrey. But it was a security detail for a controversial head of state who was visiting him.

His subject, on this morning in early November during a set of interviews he’s agreed to have with me about his life and views, is “hyper wealth.” His subject is always wealth—how capital should react to the given global political, economic, and cultural moment. The faux-baronial quality of the dining room is disturbed by an ever-present white board, where he scribbles calculations and notes, conducting the world's most rarified economics class, often attended by many of the world's finance ministers and foremost economists.

His stock in trade is not precisely the making of money, but the issues that arise when money, at a heretofore unimaginable rate, makes itself, altering many basic economic, social, and personal calculations. He recounts a dinner he had two nights before. The scene is, like much of what he does, a conspiracy theorist's fantasy—the six men at this dinner, all technology entrepreneurs, representing, together, several hundred billion dollars and now trying to figure out how to use it to shape the world to their liking.

"In the past, only governments had this kind of money, money of a reality altering scale," says Epstein in a chipper and smoothed-out Brooklynese. "In fact, it used to be that the rich, reaching a certain point of philanthropy, merely hoped to help make the world a better place, now they want to change the world. Rockefeller and Carnegie were, as examples of social-engineering philanthropy, unique. They alone had such resources and will. Now you have legions of people who have to give away vastly larger fortunes than Rockefeller or Carnegie had at their disposal, or might even have imagined.

"Except that it's actually hard to give away this kind of wealth, without unintended consequences that can cause more problems than you're solving."

Epstein's long-time business thesis is that the rich know very little about money. They may know about their own businesses, but the great sums that are the result are ultimately an afterthought and demand an entirely different sort of intellectual discipline. The Forbes 400, says Epstein, not immune to an amount of wonder, increased their wealth by $500 billion last year, meaning, in effect, that on average every Forbes-list billionaire makes more than another billion every year. And, points out the 62-year-old Epstein, they will almost all be dead in 40 years, most well before that, meaning $4.2 trillion, compounding everyday, will have to be given away. "So, to understand the future, what you have to begin to do is follow the money, not in Watergate-like terms backwards, as in who has gotten it, but forwards to where it will go and who will get it."

Epstein can find himself echoing aspects of Thomas Piketty on the inequities of the accumulation of wealth ("the divide is between people with assets, which appreciate, and people without assets, who fail to advance—that is, of course, the miracle of compounded interest"), except for the fact that Epstein, knowing the rich, understands a point that Piketty doesn't: "Nobody, *nobody*, wants to give it all to their children. Everybody now has the modern appreciation that one of the curses of great wealth is that it can make your kids weird and fucked up."

Epstein's position in this private allotment of a decent fraction of the U.S. Gross Domestic Product is not as a philanthropist but as a sort of adviser or guru or brain—a rich whisperer—making him, in addition to rich himself, arguably among the most influential people you've never heard of.

Though, likely, you have heard of him—not for his prowess with high abstraction, but for a scandal of such luridness that he is, for a great many, the poster child for the lawlessness of privilege. He is *that* Epstein, sent to jail in 2008 in Palm Beach on a prostitution charge, based on the complaints of over a dozen underage girls making him, according to the Daily Mail—among his most fervent antagonists—"one of America's most notorious sex offenders."

And yet the mighty and powerful, disregarding his notoriety, still beat a path to his door. It's a fantastic conclave of influence in his dining room: financiers, billionaires, heads of state, economic ministers. This includes, hardly least of all, Bill Gates, for whom Epstein has become a key advisor. Epstein has proposed leveraging the resources of the Bill and Melinda Gates Foundation to accommodate many other fortunes, so that, Epstein explains, "you might join 50 or 60 billionaires on one giving project."

Hence, as part of a Gates-encouraged effort to get "out in front" of the notice that might be expected to greet Gates' public association with him, Epstein—whom I first met in 2002 as part of a group of TED participants he was ferrying on his plane to the west coast—agreed in early fall to these on-the-record conversations with me. He hoped that, six years after his release from prison, he could begin to rebuild his public reputation.

Then, just before the New Year, Epstein forwarded me a heads-up email that Alan Dershowtiz, one of Epstein's longtime friends and occasional legal advisors—they have a bickering brotherly relationship— had received from a reporter at Politico. The Politico reporter had been following Epstein-related court filings and found a new one added to an old lawsuit with some rather jaw-dropping claims. The civil filing, based on claims of one of the plaintiffs, purported to connect a catch-all of bold-faced names associated with Epstein more than a decade ago, including Dershowitz and Britain's Prince Andrew, to a "sex slave" ring. Indeed, she claimed that she had been forced to have sex with Dershowitz and the Prince at Epstein's command.

Epstein, who sometimes seems to have an out-of-body attitude toward his own fate and bad press, said that while the claims were ludicrous—putting Dershowitz in a sex slave ring, he said, ought to point out just how ludicrous—he thought it might provoke "quite a show." In short order, Prince Andrew's alleged involvement sent the U.K. into tabloid frenzy (even the normally sniffy Guardian, in full anti- royal and anti-billionaire fever, joined in), which then effectively exported the story back to the U.S., where Epstein's now-long-defunct connection to Bill Clinton, suddenly became a shadow over Hillary, and hence big news.

"I told you," said Epstein.

There is Epstein in his inner world, trying, ostrich like, not to look out. Little beyond his strict realm seems palatable or even all that familiar to him. Not long ago, when I met him for lunch in the West Village, he noted that he hadn't been out to lunch in a restaurant in ten years. It was a not particularly pleasant experience for him and we were done in 30 minutes.

Then there is the outside world pressed to the glass, appalled and titillated by the monster inside the big house. Press accounts recycle the mysterious billionaire mythology—a man of vast and unsourced riches living in a parallel universe of absolute entitlement—with brief glimpses of him stepping out of the house (the same photos endlessly republished), and the assumption of depravity inside.

In fact, the life in the house, without wife or children or conventional domestic demeanor, in some way conforms to the scripted fantasies: a life somewhere between Daddy Warbucks and Eyes Wide Shut. There is indeed a group of young women—in their twenties and thirties—who act as Epstein's support staff and companions. Some have worked for him for many years, marrying, having children, and continuing as part of his business and household infrastructure. One woman, on an afternoon when I was there, had just returned from an around-the-world honeymoon that Epstein had arranged for her. Some are, or have been, his romantic interests. His present girlfriend, whom he met four years ago at a dinner party in New York, is in dental school. One former girlfriend, Eva Andersson Dubin, a Swedish model and Miss Universe finalist whom Epstein has known for more than thirty years, became a doctor—Epstein sent her to medical school—and married hedge funder Glen Dubin. Together they finance the Dubin Breast Center at Mount Sinai Hospital. Most of the women at one time will travel with Epstein to his other floating residences—the ranch in New Mexico, a vast apartment in Paris, the island in the Caribbean, the house in Palm Beach.

Epstein will sometimes move a meeting in his dining room outside to the park—his idea of going out to lunch is a Sabrett's hot dog—with the various girls in the house the accompanying entourage, as though something out of an 18th-century French court.

But the Hefnerian prurience can also be quite businesslike: poised young women in a mansion on the Upper East Side with various office responsibilities are really not that different from any of the art galleries in the surrounding neighborhood. They mingle freely with his powerful guests, not so much as hostesses—or, in tabloid language, harem-like "sex slaves"—but as attentive students (which, of course, might be regarded as having its own fetish-like attraction). Epstein explicitly denies that there is an sexual quid pro quo.

(TK Jimmy Goldsmith quote.) Still, the constant attendance of so many comely young (but of age) women—especially given his past conviction—seems so outside of conventional living or staffing or social or romantic relationships that it is hard to describe in a straightforward or straight-faced way. And while it may be part of the appeal for the men who come to visit Epstein, it is as well a peculiarity they put up with in order to spend time with him. It sometimes seems part of Epstein's implicit challenge: not just look at me, but do you even believe what you see? Or it seems he is just oblivious to what others are thinking. A willful and perhaps fatal tone deafness.

The Epstein house/office is, by careful design, exclusive and clubby, part hang out, part secret society. Along with the fact that, even after his jail term, the rich and powerful have continued to so eagerly solicit him, it's also notable in the fixed hierarchy of who comes to whose turf, that, when they want to see Epstein, they tend to come to him. He's created a world and you enter it.

A week in late September—U.N. week as it happened—begins, over Sunday lunch, with a colloquial for billionaires: Gates, Mort Zuckerman, the real estate billionaire and owner of the Daily News, and Peter Thiel, the PayPal co-founder and early Facebook investor. The subject is Epstein's concept for the Gates Foundation of what he calls a "donor advised fund" that could lend the Gates expertise to other billionaires and his view that only the Gates Foundation has real experience in the vast complexities of giving away "hyper wealth."

That evening, Epstein, preternaturally responsive to both the price of oil and to the politics of the Middle East, entertains a delegation from Qatar, including Sheikh Hamad Bin Jassim, the foreign minister. Hamad lives across the street in a similarly furnished house—he and Epstein have the same decorator. Epstein, in his relaxed and amused manner, keeps prodding: "Why are you financing the bad guys? What do you get out of that?" The Qatarians, in some mild diplomatic discomfort, seem most worried that their bid for the World Cup might be compromised by bribery allegations.

At 9 the next morning, Epstein is joined for breakfast in the dining room by Reid Weingarten, who's represented, among other fat cats in trouble, Worldcom's Bernie Ebbers and Goldman Sachs's Lloyd Blankfein, and is one of attorney general Eric Holder's closest friends. Weingarten, hoarse with a cold, is just back from a failed defense of former Connecticut Governor John Rowland. After a blow-by-blow of the trial, there was a discussion of the Qatarian's visit—Epstein served chocolate made from pistachios grown on the Sheikh's farm—and speculation about who actually controls ISIS, with Weingarten arguing that the Turks are not getting enough scrutiny (he posits that ISIS is part of their proxy war against the Kurds). There is, in Epstein's dining room, always an alternative version of world events—"perception versus reality," says Epstein, "not to imply that one necessarily has greater weight than the other."

"Why," I ask Weingarten, when Epstein briefly steps out of the room, "do so many people keep coming back here, everything considered." This is before the most recent blowup but has been an obvious question ever since his stint in jail.

"Why we camp out here? I guess because there's no place like it."

Epstein summons in the next person cooling his heels in the ante-room. It's a young man named Brock Pierce, a former child actor and dotcom high flyer—a principle in a gaming company called DEN, a notorious dotcom burnout with its own sex scandal—who now describes himself as the "the most active investor" in Bitcoin and the programmable currency space.

After a bit, Epstein invites his next appointment to join them. Larry Summers, the former treasury secretary and President of Harvard, enters the dining room. Summers, off Diet Coke, digs deep into the Sheikh Hamad chocolates, then focuses in on the Bitcoin investor.

"Okay," he says, after listening for a bit to Pierce and his update on the rapid Bitcoin price swings, "I have opportunities here. But an additional feature of my decision problem, roughly speaking, is that the worst that could happen to you is that you could lose all the money you put into it. Whereas, I could go—I mean I don't look that great now—but I could go from being seen as a figure of some probity and some intelligence to being a figure of much less intelligence and much less probity…"

"Well," says Pierce in seeming dramatic understatement, "you are going to have some low quality characters playing early in the space…"

That evening, in the Epstein dining room (he seems rarely to use the rest of the house's 50,000 square feet), there is a small cocktail party, which includes the former Prime Minister of Australian, Kevin Rudd, and Thorbjørn Jagland, the head of the Nobel Peace Prize Committee, who offers an affable, but generally scathing, critique of U.S. diplomacy (and a brief defense of Obama's Peace Prize award) and to whom Epstein offers a ride back to Europe on his jet.

The next morning, it's Ehud Barack, the former Israeli Prime Minister, for breakfast. Barack is, over his omelet, able to defend both Obama and Putin. Then a high ranking official from the Obama White House, whose name I am asked not to use. There follows the former head of the UN Security Council, Hardeep Purie, and then head of the central bank of Kazakhstan, Kairat Kelimbetov. Then Nathan Myhrvold the former chief technology office at Microsoft. Then Martin Nowak, a Professor of Biology and Mathematics and Director of the Program for Evolutionary Dynamics at Harvard, the institute that Epstein has funded with $30 million. Part of Nowak's research has to do with trying to "describe cancer mathematically." (Epstein preempts Nowak's explanation : "Think of cancer the same way as you think of a terrorist group. The NSA has been able to thwart a great number of terrorism acts by intercepting communication signals from one terrorist to another. That same dynamic, a form of signal intelligence, of finding a terrorist in Europe, can be used to intercept communication between cancer sells. Cancer cells merely communicate in protean code rather than electronic code. If you can decode what the signals are saying you can jam those signal between terrorist calls—essentially wipe out their cell phones. Likewise if you can decode biological signals you can jam them too, that's the holy grail.")

Then Richard Axel, a Nobel prize winner in physiology. Then Ron Baron who has $26 billion under management in his Baron Fund. Then Josh Harris, the co-founder of Apollo Global Management ($164 billion under management) and owner of the New Jersey Devils and the Philadelphia 76ers.

What goes on at Epstein's house confirms everyone's worst fears about power and the powerful: they are all in a secret and shared conversation. The world runs on insider information. And, certainly, inside Epstein's dining room, it remains a man's world—a rich man's world. Indeed his salons tend to offend most every aspect of reconstructed gender and political sensibilities.

The rich come here, risking public opprobrium, not to mention the censure of their wives, because there aren't, in this leveled age, too many places where they don't have to pretend that they are something other than rich and powerful. The conversations at Epstein's are the conversations, I suspect, that rich men dream of, but in the real world are actually hard to have. At Jeffrey's the rich don't have to humor the sensitivities of the rest of the world. This is unfiltered power and wealth, which seems not so much crass as efficient: this is the way the world works, no bullshit. Epstein facilitates that conversation without guilt or worry, and, in fact, with great glee and enthusiasm. It is not just the remarkable flow of valuable information before it hits the New York Times (including, while I sat here, notice of the resignation of a cabinet secretary a week before it hit the Times), but Epstein's almost small-town narrative of the doings of the powerful in the face of this week's economic trends, a kind of back-fence gossip that just happens to feature the comings, goings, and secrets of some of the world's most astute players and assorted megalomaniacs.

Wealth is the bond and the experience. Once, at lunch in the Epstein dining room with Bill Richardson, the former Governor of New Mexico, and past Presidential aspirant, when Epstein left the room for a few minutes, I asked the obvious question, the one everybody asks each other, "How did *you* meet Jeffrey?" Richardson seemed surprised: "Jeffrey," he said, as though stating what should have been perfectly obvious, “is the biggest landowner in New Mexico.”

Epstein has a yet more structural explanation as to why, after prison and with continuing tabloid infamy, he can maintain his valued place. It comes back, not unexpectedly, to the nature or the needs of money: “At a certain level of finance, almost everyone is allied with an institutional interest. You are part of government, or you want to be in government, or you are connected to a bank or other portfolio, or you have key relationships with certain corporations or industries. Because of my situation, I have none of that. I have no institutional ties which makes me in some sense one of the few wholly independent sources of information and actual honest brokers. That’s the usefulness of disgrace.”

It’s also true that Epstein’s circle might be more forgiving of disgrace than the rest of the world. Many of these men have themselves been on the wrong side of a negative story or a scandal or a damaging public lawsuit. Any hyper-prominent person might run afoul of prosecutors, the political moment, the media, or the Internet hoi polloi. And they know that the media’s (or prosecutors’) version of events seldom square’s with their own. In that way, they are, even after a conviction, quite willing to give Epstein the benefit of the doubt.

There is even a wry sense of humor about his propensity for a certain kind of scandal. People who know Jeffrey exchange “Jeffrey” stories. “That’s Jeffrey,” says Mort Zuckerman, (whose paper, the Daily

News, is ever vitriolic in its coverage of Epstein), with a twinkle in his eye and obvious enjoyment, to tales of Epstein escapades. It is an outréness that Epstein seems to cultivate. In his Paris apartment, 10,000 square feet on the Avenue Foch, a neighborhood otherwise occupied by foreign potentates, there is a stuffed baby elephant in his living room—that is, the *elephant in the room*. (Epstein says too it's a reminder that elephants have 23 copies of tumor suppressor genes and humans have only 1.) The single book on his bedside table is Lolita (he is, beyond the joke, a great Nobokov fan).

And, too, he seems often to be right. Since I began working on this piece in September, Epstein predictions about the price of oil, yen, ruble, and euro have all born out. If I had invested $100,000 the way Epstein said I should in early September, by the end of January I would have made $2.4 million. (Alas, I did not invest.) At any one moment, he is making a series of bets for himself and others. Recently he identified a dozen or so promising quants, each hawking their own special-sauce algorithm, and planned to test their math with investments of up to $5 million each. But don't mistake him for running anything like a workaday hedge fund; this is much more a privileged association. Money is always about the club it gets you into.

Most everyone who is now of a certain age and ambition and status grew up in, and found they were temperamentally suited to, the era of wealth that started in the late 1970s. A meritocracy on steroids, or, as Vanity Fair would baldly dub it, the new establishment, an increasingly parallel world, a self-invented one, at further and further remove from the ordinary one. Epstein's is just one version, albeit picaresque and louche, of this shared story.

Epstein often tells, with some obvious marvel, his middle class to riches tale: born in 1953 in Coney Island, father worked for the city's Parks Department, mother a housewife.

The captain of the math team at Lafayette High school in Bensonhurst, he went on to Cooper Union where the tuition is free. He dropped out after two years and began taking classes at the NYU's Courant Institute of Mathematics. Then, without a college degree, hence by a slight of hand, he got a job teaching math and physics at Dalton in 1974. (A few years ago, during a chance encounter with a former Dalton math department chairman, Margo Gumport, I asked her about Epstein. She said he was the most brilliant math teacher at Dalton in her 50-year career and that she had often wondered what had become of him.)

Dalton was his first exposure to the wealthy. They have, he concluded, just as many problems as the people in Coney Island, but different ones, almost invariably involving divorce and money. "I found it interesting as a science experiment," he recalled recently as we chatted about his life. "It did not really involve me. I could just stand back and watch."

Dalton fathers were attracted to him as a young man clearly on the make. Punch Sulzberger, the publisher of the New York Times, and a Dalton father at the time, tried to recruit Epstein to come to the Times. (Epstein recounts a story of riding with Sulzberger in his wood paneled station wagon to the family's country estate and Sulzberger talking to the chauffer on a phone from the backseat to the front.) But he wasn't interested in being a journalist.

In 1976, another Dalton father, asking "wouldn't you rather be rich than be a teacher?" introduced him to Bear Stearn's chief Ace Greenberg, a conversation Epstein recounts as this:

Greenberg: "Everyone tells me you're super smart in math and you're Jewish and you're hungry…so why don't you start working here tomorrow?"

Epstein: "What?"

Greenberg: "If you're supposed to be so fucking smart, don't you understand English?"

Epstein: "Ok. Count me in."

Hence, Epstein, like many in the late '70s, arrived on Wall Street. By the fortuitous luck of being there at that point in time, Epstein was propelled by a much more explosive form of upward mobility than had ever before existed. With a facility for mathematics as well as for getting along with wealthy men, he got rich at an even faster rate than so many others.

He moved into the penthouse of a new building at 66th Street and Second Avenue—still in the shadow of the Maxwell Plum era when the 60s on Second was the glamour address—a building that was, he says as a fond memory, full of "actresses, models, and euro trash." (It would shortly become the Studio 54 era, where Epstein, who has, proudly, even militantly, never had drink or taken any drugs, was a regular).

If on one side of Wall Street there were the salesmen (the Wolf of Wall Street model), on the other side there was a new sort of finance type able to embrace a level of acute abstraction. "In the past," says Epstein, "investing was all about reputations and relationships. You invested in a company on the basis of who was running it. Did they have integrity? Were they married? Good family men? It was a '50s mentality. But in the mid '70s options started to be traded. In essence, the first formal derivatives. The movement of this instrument is not directly attached to the stock price. The world of investing began turning from relationships to math. In a sense I didn't really make money as much as I tried to create it. This was intellectual activity of a fairly high order."

Intellectual activity aside, he met Helen Gurley Brown and she made him Cosmopolitan Magazine's Bachelor of the Month in 1980.

"What," I ask, "was your social life like?"

"Well, I was a playboy."

"That's all? Not looking to get married?"

"No. Never. I never wanted to get married. I enjoyed sex. I adore women. I wanted freedom. I was attracted to the rich because of their freedom. But I wanted also to avoid their burdens. And I didn't want to hide. I didn't want to be a hypocrite. I wanted to be free. I was not remotely ambivalent about what I wanted: to be free. That was the reason to make money."

His rise at Bear Stearns was a swift one. And he soon became the protégée of Jimmy Cayne (also hired by Ace Greenberg on a whim—he met him in a bridge game), who would go on to run Bear and to lose his fortune in Bear's 2006 collapse). Epstein's leave-taking or ouster from Bear was the result of politics, envy, overreaching, or a securities violation, or…unclear. But, no matter, when he left in 1982 he took with him billionaire clients, including Marvin Davis, a real estate developer who owns Twentieth Century Fox, and Herb Seigel, a major media investor in the 1980s. At this point, Epstein was dating Morgan Fairchild, a television star in the new mega-rich-family soap operas, Dallas and Falcon Crest.

The Concorde phase of his life coincided with the Concorde phase of the 1980s. If the '80s were happening pell mell in New York, they were happening at double time and catch up speed in London. Thirty-year-old Epstein was living a Lifestyle of the Rich and Famous (he befriended the show's star, Robin Leach), at English shooting parties and country estates with Saturday night black tie dinners, where he was meeting the over-the-top families of Europe.

"I didn't take it seriously," Epstein recounts. "I was not caught up in it. I wasn't trying to make a billion dollars. There was no ultimate goal. It was just fun to meet smart people, interesting people. But no long-range plans. Often no short-term plans either. I would head to Kennedy and, on the theory that most important events in one's life are serendipitous, I wouldn't decide where I was going until I got there."

At the same time, he was developing a perception, or, at least a market differentiation: the hyper wealthy had different problems than the very wealthy. Dealing with a billion dollars was different from dealing with $100 million. "If you had a billion dollars I would think the last thing you should be worried about was money, in truth money was what you most worried about. How to make more of it, how to give away more of it, how to protect your children from it, how to hide it from your wife or husband, how to minimize your taxes on it. The traditional wealth service structure, an accountant, and investment advisor, a personal lawyer, and an idiot brother-in-law, became hopelessly outdated as amounts exponentially increased.

"You can't spend a billion dollars, you can just reallocate it to a different investment class. And you can't give away a billion dollars without a vast staff, in effect going into the business of giving away money, yet another business you are likely to know little about."

For a period, one part of his activities, he says, was recovering monies for countries looted by exiled dictators or military strongmen. Then, in his telling, he was representing a series of vastly wealthy people and families—not just doing their bidding or their investing, but helping them to navigate the ambitions of their wealth. If they had big dreams before, it's nothing to what they can have now.

If early in his career he might have seemed like a sort of George Peppard (there's a physical resemblance) in Breakfast at Tiffany's, a charming hustler, later he's George Peppard in Banacek, a smart and astute operator. At just about this point in the narrative, the incredulity about Epstein began to circulate in social circles. Epstein had acquired the major symbols of wealth but without position, public holdings, or obvious paper trails. His is a questionable substrata of wealth, without institutional credentials or bona fides. He's a freelancer. That's the rub: he doesn't work for anyone.

There is no clear alternate narrative, except perhaps guilt by association. (In addition to Robert Maxwell, who will be accused of fraud, there's Steven Hoffenberg, briefly a New York high flyer, who went to jail for a Ponzi scheme, for whom Epstein acted as a consultant—along with, he points out, Paul Volcker.) But the characterization persists: if it's not clear, it must be murky. Sure, Goldman Sachs partners and tech geniuses, they might have stratospheric wealth, but what to make of a Coney Island, Zelig-like no-namer?

In 1994, just at the moment when Prince Charles was on television acknowledging his love for Camilla Parker Bowles, Jeffrey Epstein was sitting with his arm around Princess Diana at a dinner at the Serpentine Galley in London (Diana wearing her "revenge" dress that evening). Graydon Carter, in his second year as editor of Vanity Fair, was also at the dinner. Epstein's rise and Carter's rise are not, with a little critical interpretation, that different. Both are a function of the age of new money, both are helped by strategic relationships with the exceptionally wealthy, both have made themselves up. To say that Epstein, in the company of the Princess, stuck in Carter's craw would be an understatement. Epstein became one of the "what do you know about him" figures in Carter's gossip trail—a story waiting to happen. Carter once advised me not to go to Epstein's house or accept a ride in his car least I risk being blackmailed. ("For what?" I asked Carter. "You can't even begin to imagine," said Carter.)

Epstein is private and secretive, but grandly so. He joined the board of Rockefeller University. He was suddenly on the Trilateral commission, that cabal of business people who fancy themselves, and who are fancied by conspiracy buffs, as running the world. He bought, from his client Limited Founder Les Wexner, the largest private house in Manhattan. (Rumors will continue for many years, that Wexner owns the house and Epstein is just squatting in it—an 18-year squat.) He bought an airplane. Then another. He expanded his holdings in New Mexico. He began a Xanadu-like refurbishment of his Caribbean Island.

He befriended Bill Clinton in his new after-office life—and that would prove to be quite the fatal pairing.

The post-Monica Clinton, now having pardoned the on-the-lam financier Marc Rich—at this point, before his own rehabilitation, Clinton really is the world's ultimate sleaze ball—was suddenly being ferried around in the jet of…*who* exactly? The New York Post was the first to take formal media note of the Clinton-Epstein connection, hinting at a sex and money bromance. "I suppose travel with Clinton changed the arc of my life," Epstein tells me. "There were, I knew, lots of obvious reasons not to do it, but having the ability to spend 100 hours with a former president just doesn't happen to many people."

I met Epstein around this time, on the flight out to TED. (Epstein had become an active backer of advanced scientific research and a fixture at the conference.) A small group assembled at the private plane terminal at JFK, most of us unfamiliar with our benefactor, and as we headed in the direction of the discreet private plans we were gently pointed to our ride: Epstein's 727.

It was like something out of a men's magazine fantasy of the luxe life. The quiet of the plane, engineered into acoustic perfection, seemed spooky. Epstein was accompanied by three young women who were witty, poised, helpful, as well as powerfully alluring. And Epstein, tanned, relaxed, with a wide open smile, was an attentive host, soliciting every guest's story and views. (One more thing about this trip: Google founders, Larry Page and Sergey Brin, with their company still in its infancy, came out to see the plane on the Monterey tarmac and, with a few other Googlers, literally ran whooping from one end of the plane to the other. Then they described for Epstein, in what I cannot now remember was a put-on or entrepreneurial brainstorm, a brand extension in which they would market a line of Google bras with the Os as convenient cups. In fact, the name Google, they said, was invented out of the belief that men would focus on a word with two Os in it.)

Not long after this trip, Epstein's assistant called to invite me for tea at his house in New York, where Epstein, with what seemed to me little understanding of the subject, began to ask me about media—the upside, downside, and nature of media coverage. (Epstein's flirtation with the media would result in his backing an unsuccessful effort, of which I was a part, to buy New York Magazine in 2004, and then later, with Mort Zuckerman, backing the launch of Radar magazine.)

New York magazine was then soliciting him for a profile, as was Vanity Fair, who had assigned the British journalist, Vicki Ward, to the job. Both profiles—New York's by Landon Thomas—pivot on the Clinton connection and detail the same quandary, how a man without clear institutional bona fides nevertheless achieved such wealth and influence. Epstein, sensing that he might be exposing himself, called Carter and said he was having second thoughts about being a public figure.

“Then you should have lived in a two bedroom apartment in Queens,” responded Carter.

And then the real troubles began. Epstein, in man-who-can-have-everything fashion, has, for many years, ordered up a daily massage following his workout sessions.

“Often these were massage massages,” says Epstein matter of factly, “but sometimes these were happy ending massages, especially in Palm Beach, where there are many massage parlors—‘Jack Shacks,’ they’re called—that do outcalls. There was no sex. An often there was no happy ending. Often I would be on the phone for the entire massage. There were however a lot of massages and a lot of girls, with one girl recommending others.” He says all this in a straightforward manner that seems utterly tone-deaf to its effect, as if he suffers from a sort of cultural autism.

After Epstein’s round of publicity and widely touted association with Clinton, the stepmother of one of the massage parlor girls who went to Epstein’s house called the police. The police interviewed the girl—who was TK at the time, but whose website identified her as 18—and the girl supplied the names of other girls, some of whom were also younger than 18.

In the end, the police tracked down 18 girls—nine of whom were under 18 [THIS IS IMPORTANT: HOW OLD WAS THE YOUNGEST?]; the others were in their 20s and 30s; one woman was in her 60s—a number of whom gave statements describing, in essence, happy - ending massages. (Although the nature of the allegations will dramatically grow into threesomes and forced sexual encounters, nobody at this point alleged anything more than this.)

A shadowy rich man, friend of the louche and disgraced president, at all times surrounded by a retinue of young and attractive women doing his bidding, is found to have gathered a network of wrong-side-of-the-tracks Palm Beach girls to provide him with weird sexual services. (It somehow reads weirder that he doesn't have sex with them.) To boot, his former girlfriend, Ghislaine Maxwell—the daughter of the disgraced Robert Maxwell—encouraged at least one of the girls to come to Epstein's home (and is henceforth known as the procurer or madam for Epstein and, later, his friends). It certainly doesn't look good.

Epstein called in Dershowitz, who flew into Palm Beach to put the local authorities in their place—alienating Palm Beach officialdom—and, further amping up the profile of the case, also brought in Roy Black, the famous criminal attorney who defended William Kennedy Smith in his rape trial in Palm Beach. Epstein might have just been hit with solicitation charges and paid a fine even though some of the girls were underage; prostitution charges in Florida (as in most places) have no age limits and the Palm Beach grand jury proposed solely a solicitation charge. But Epstein's flamboyance and his friendship with Clinton invited the scrutiny of the Bush FBI, and ultimately Epstein and his legal team decided to go for a plea deal. The result was a baroque set of agreements with both the Feds and Palm Beach county, which mandated jail time (Epstein was sentenced to 18 months, of which he served 13—nearly all Florida prisoners serve only 70% of their officially sentenced time) and sex offender status. The deal also provided for an unusual, if not unprecedented, arrangement by which he agreed to pay the legal fees for 40 girls specified by the FBI in civil suits against him and not to oppose their claims, resulting in an overall settlement costs that may be as high as $20 million. (A bit more baroqueness: one of the lawyers representing some of the plaintiffs, Scott Rothstein, would also go to jail for recruiting investors to pay for these suits on the fraudulent basis that settlements had already been reached and that many of the listed women had agreed to take reduced immediate cash payments.)

It is in part this impossible-to-explain weird-justice outcome that has made some people think Epstein was covering for someone, or something, else—perhaps his most high-profile friend?

"So?" I ask, one day late in our interviews. "Explain this. It does make it look like you were covering for you-know-who."

"Covering?" He chuckles. "First, by the way, you-know-who was never there. Never came to the island. Not once. Not ever. But you're right—nobody has ever heard of anything like [this agreement]. But while it was breathtaking, it was also straightforward: you sign this or else we will federally indict you in ways that will threaten your property, the people who work for you, and might put you in jail for ten years. I took the deal." (Indeed, the deal protected him from federal prosecution, and protected his "co-conspirators," the employees who supplied him with massage girls, from being charged as accessories to molestation and sex with minors.)

Epstein got out of jail in 2009. The experience does not seem to have much dented his general bonhomie. One evening over dinner he and the former director of ports in the semi-rouge state of Djibouti, who had fallen afoul of the regime and found himself in prison, exchanged jail stories—they agreed, not as bad you'd think. Epstein, having done his time, moved mostly seamlessly back into his life, to the shock-shock of tabloids whenever they are reminded of his existence (notably, when Epstein's payment of Fergie's debts slipped out, likely leaked by Fergie herself).

Some things changed. While surprisingly few others dropped him, the Clinton's did, an irony of the present tabloid interest in Epstein's old address book with its many Clinton contacts. And his sex offender status has transformed him from libertine playboy to pedophile.

While he has regularly entertained PR proposals aimed at his public rehabilitation, until Gates prodded him, and until this recent renewed tabloid fever, Epstein had concluded that he was perfectly satisfied living behind high walls and in his own exclusive club. Even now, this new Dershowitz-Prince Andrew chapter seems like a parallel disturbance rather than something that is actually affecting him. "Bad press is not something actually bad," he notes, trying to balance perception and reality.

And, indeed, the tabloid narrative and his own story rather define divergent realities. The ongoing case, with the filings that introduced the Dershowitz and Prince Andrew allegations, was brought by the imprisoned Rothstein's former partner, Brad Edwards. It relies entirely on the testimony and the memoir, excerpts of which were published by the Daily Mail, of Virginia Roberts, who claims that Ghislaine Maxwell met her, when she was 17, at Donald Trump's Palm Beach resort and got her a job in the Epstein house, which she held for several years, traveling in the Epstein entourage. It is Roberts—who refused to cooperate with the FBI's 2007 investigation of Epstein—who has propounded the "sex slave" narrative. She claims that "massage" was a code word for sexual acts, and that she worked for Epstein for

TK years for $TK, having sex with him and his friends, and reporting on the details to Epstein so he would have blackmailable details about them. In the laundry list of big names, she also claims that Epstein introduced her to Bill Clinton and Al and Tipper Gore (though there was no sex involved).

Roberts, who was part of the original settlement—which some accounts put as high as $1 million—has sought an additional $50 million {NEEDS STATUS CHECK} from Epstein [CLARIFY THAT SHE IS NOT SUING HIM BUT SUING THE GOVT AND SAYING SHE'LL DROP IT IF HE PAYS HER?], and is planning a book on her life and the scandal. But there has been no corroboration of the Roberts charges nor any new evidence or further prosecution. Epstein says she never met Clinton through him and, indeed, that he himself has never met the Gores. Dershowitz is suing her for libel.

But true or not, the story has taken on a life of its own, with the US and British tabloid press continuing, so far unsuccessfully, to search for a smoking gun connecting Clinton to underage girls, which could have the effect of derailing the Hillary Clinton presidential campaign. In the meantime, it is delaying—quite an understatement—Epstein's hoped-for public rehabilitation.

It is a curious attribute of his character that, other than perhaps being more circumspect about what legal advice to follow, Epstein would have done little differently. (When I suggested recently to Epstein that one obvious way to blunt the animus bearing down on him would be to get married, he said he'd rather go back to jail.) His life, living it as he wants, seems to him to be an extraordinary accomplishment. Being on the wrong side of morality, custom, politics, feminists, the media, that's just a bit of bad luck.

And it is perhaps this attitude of his that irks his critics the most. Although he has spent more than a year in jail and paid out what may be as much as $20 million, he yet seems somehow to have gotten away with it—that worst sin of all. He is the unrepentant catchall of up-to-the-minute badness: the financier whose wealth is a product of Wall Street math rather than work; a rich middle-age white man who not only parades his wealth and entitlement, but has a Peter Pan complex to boot; an insistent playboy (excuse me, pedophile) in a correct and prudish world—someone who somehow didn't get the memo about vast changes in mores and culture.

But Epstein's friends—and I think that is, in the end, the best word for the powerful people who orbit him—are willing to take him as he comes. Epstein is their confidant. Not the only nexus of them, but one of them. Dr. Epstein. Lay on my couch. As he is everybody's confidant, everybody becomes his confidant. This is the back and forth, the power loop. His expertise is knowing what other people know. Which surely offers a unique sense of confidence that it is possible to understand how the world works. And in a time of such radical flux and existential instability, everybody wants to seek out someone who might have some answers or at least make you feel like he does—even, and maybe especially, the rich.

In the last days of my interviews with Epstein, he was called by a particular world-stage individual, among the richest and most powerful—proudly louche himself—who, feeling out of his depth in a world of crashing oil prices and wild currency fluctuation, had come to believe he might benefit from some private tutoring. Epstein welcomed him to the club.

From: jeffrey E. [jeevacation@gmail.com]
Sent: 4/22/2015 7:16:34 PM
To: Darren Indyke [redacted]
Subject: Fwd: ATTORNEY-CLIENT PRIVILEGE

Importance: High

---------- Forwarded message ----------
From: **Martin Weinberg** [redacted]
Date: Wed, Apr 22, 2015 at 3:03 PM
Subject: ATTORNEY-CLIENT PRIVILEGE
To: Jeffrey Epstein <jeevacation@gmail.com>, Kathy Ruemmler [redacted]
Cc: Martin Weinberg [redacted]

As just received.
Martin G. Weinberg, Esq.

20 Park Plaza, Suite 1000

Boston, MA 02116

[redacted]

[redacted] cell

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Martin G. Weinberg, P.C.,

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--- On Wed, 4/22/15, Hill, James E. [redacted] wrote:

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> From: Hill, James E. [redacted]
> Subject: FW: inquiry from ABC News re Jeffrey Epstein
> To: [redacted]
> Date: Wednesday, April 22, 2015, 1:57 PM
> #yiv0232406113
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> 5 2 2 2 4 3 2 4;}
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>       {}
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> #yiv0232406113 div.yiv0232406113WordSection1
>       {}
> #yiv0232406113
>  _filtered #yiv0232406113 {}
>  _filtered #yiv0232406113 {font-family:Symbol;}
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>  _filtered #yiv0232406113 {}
>  _filtered #yiv0232406113 {font-family:Wingdings;}
> #yiv0232406113 ol
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> {margin-bottom:0in;}
> #yiv0232406113 ul
> {margin-bottom:0in;}
> #yiv0232406113 Marty: With the understanding
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> will not be included in our broadcast, here are the bullet
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> We'd ask for your response as soon as possible – best if
> by close of business Friday. Thanks. And I'm
> always available to talk to you if you wish to communicate
> with us. ·
> She says in summer of 1999 when she was
> 15 - Ghislaine Maxwell approached and asked her if she was
> interested in a job as a masseuse·
> She says she was later (that same day)
> driven by her father to Epstein's Palm Beach residence,
> where she massaged Epstein with Maxwell's guidance, and
> then she says she was made to have sex, to include
> intercourse, with Epstein. At conclusion she says she
> was paid $200 and driven home by a butler.·
> She says she quit her job and went to
> work for Epstein within a couple of weeks of the first
> encounter·
> She says Epstein always knew how old
> she was and says specifically that she, Epstein and Maxwell
> celebrated[redacted]'s 16th b-day together·
> She says Epstein paid her for the
> encounters and for her apartment and car·
> She says she would be expected to have
> sexual relations with Epstein up to several times a
> day·
> She says there was an uncountable
> number of other girls in similar situation to her, some as
> young as 12·
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> to go out and recruit other young girls for him.·
> She says that while she was free to
> come and go – she felt like she was under his control and
> she didn't want to disappoint Epstein.·
> She says Epstein required her, and paid
> her, to have sex with many of his friends. ·
> She says these people included
> politicians, royalty, educators·
> She says she had sex -or sexual
> activities - with Prince Andrew on three occasions – at
> the instruction of Epstein ·
> She says Epstein paid her $15,000 after
> the 1st of the three alleged encounters with
> Prince Andrew·
> She says that Epstein showed her a

> video room in his NY home which had monitors showing cameras
> in many locations in the home·
> She suggests Epstein made videos of
> underage girls with other people for purposes of potential
> blackmail ·
> She says that Epstein liked her to
> dress up in outfits, including bondage and schoolgirl
> outfits·
> She says she met Bill Clinton on
> Epstein's island in the USVI. She does not specify a
> date but says she is 100% sure it was Clinton and it was on
> the island. She says she ate dinner with Epstein and
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> wouldn't name – that Epstein loaned her out to –
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> happened on Epstein's island, and that she had been sent
> by Epstein – alone -to meet this person . She says she
> screamed but no one came to her aid. She says she feared
> for her life. She says she told Epstein about the
> alleged beating and rape afterwards and she said he didn't
> care.·
> She says Epstein and Maxwell asked her
> to have a child for them and to sign a document signing away
> the rights to the child in the event that she and Epstein
> had a falling out. She says she refused this
> request.·
> She says Epstein has a sick problem, is
> a pedophile, a dangerous man who should not be walking
> free -----Original
> Message-----
> From: Martin Weinberg
> [mailto[redacted]]
> Sent: Wednesday,
> April 22, 2015 1:44 PM
> To: Hill, James E.
> Cc: Martin Weinberg
> Subject:
> Re: inquiry from ABC News re Jeffrey Epstein James, just confirming
> that you are sending me the bulletpoints from the interview
> you are asking about, thanksMartyMartin G. Weinberg,
> Esq. 20 Park Plaza, Suite
> 1000 Boston, MA 02116 [redacted] [redacted]
cell ================================== This Electronic Message
> contains information from the Law
> Office of Martin G. Weinberg, P.C.,
> and may be privileged. The
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> for the use of the addressee only.
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> please note
> that any

> disclosure, copying, distribution, or use of
> the contents of this message
> is prohibited. --On Tue, 4/21/15, Hill,
> James E. [redacted]
> wrote: Subject: inquiry from ABC
> News re Jeffrey Epstein To: [redacted]
> [redacted]
[redacted]> Date: Tuesday, April 21,
> 2015, 4:36 PM
> Greetings.
> This is James Hill
> of ABC News. I write to you regarding Jeffrey Epstein – and
> your representation of him in the CVRA case in which he
> is an intervener. ABC News has recently conducted an on-camera
> interview with Virginia Roberts (formerly known as Jane
> Doe #3), portions of which are very likely to be airing on
> Good Morning America and other ABC programs this week. We would like to offer you an opportunity
> to respond to the allegations she has raised about Mr.
> Epstein. Can you tell me who among you I should be in contact
> with? Should you wish to make a statement or respond in
> any other manner - I will need it by close-of-business
> Wednesday. Thanks kindly,James Hill James
> HillABC News Producer190 N. State St.Chicago IL
> [redacted] (cell[redacted]cell[redacted]
> (ofc)[redacted]
>

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Date: Wednesday, April 22 2015 07:34 PM
Subject: Fwd: ATTORNEY- CLIENT PRIVILEGE
From: jeffrey E. <jeevacation@gmail.com>
To: Alan Dershowitz <[redacted]>;

Privileged - Redacted

---------- Forwarded message ----------
From: **Martin Weinberg** <[redacted]>
Date: Wed, Apr 22, 2015 at 3:03 PM
Subject: ATTORNEY- CLIENT PRIVILEGE
To: Jeffrey Epstein <jeevacation@gmail.com>, Kathy Ruemmler <[redacted]>
Cc: Martin Weinberg <[redacted]>

As just received.
Martin G. Weinberg, Esq.

20 Park Plaza, Suite 1000

Boston, MA 02116

[redacted] cell

==================================

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```
--- On Wed, 4/22/15, Hill, James E. <[redacted]> wrote:

> From: Hill, James E. <[redacted]>
> Subject: FW: inquiry from ABC News re Jeffrey Epstein
> To: "[redacted]" <[redacted]>
> Date: Wednesday, April 22, 2015, 1:57 PM
> #yiv0232406113
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> #yiv0232406113 ol
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> [mailto:[redacted]
> Sent: Wednesday,
> April 22, 2015 1:44 PM
> To: Hill, James E.
> Cc: Martin Weinberg
> Subject:
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> Esq. 20 Park Plaza, Suite
> 1000 Boston, MA 02116 [redacted] cell
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> James E. [redacted]>
> wrote: Subject: inquiry from ABC
> News re Jeffrey Epstein To: [redacted]"

> <[redacted]>,
> "[redacted]
> <[redacted]>,
> "[redacted]"
> <[redacted]> Date: Tuesday, April 21,
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> Doe #3), portions of which are very likely to be airing on
> Good Morning America and other ABC programs this week. We would like to offer you an opportunity
> to respond to the allegations she has raised about Mr.
> Epstein. Can you tell me who among you I should be in contact
> with? Should you wish to make a statement or respond in
> any other manner - I will need it by close-of-business
> Wednesday. Thanks kindly,James Hill James
> HillABC News Producer190 N. State St.Chicago IL
> 60601[redacted] (cell)[redacted] (cell)[redacted]
> (ofc)[redacted]
>

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From: jeffrey E. <jeevacation@gmail.com>
Sent: Wednesday, January 20, 2016 10:21 AM
To: [redacted]
Subject: Re: Help!

Importance: High

i appreciate your support is what i meant.   has anyting happened recently? it is my birthday today

On Tue, Jan 19, 2016 at 10:46 PM,[redacted] <[redacted]> wrote:

> Appreciate what? I'm not sure you do. Be back for what? Where? I don't need to be photographed. I am trying to avoid that, hence the reason why I moved out here. I don't need people coming here looking for me to give them information about you or the "people" I was documented with... It's not my property. I don't think you get it.
>
> On Tuesday, January 19, 2016, jeffrey E. <jeevacation@gmail.com> wrote:
>
>> i appreciate it. I should be back feb 14,
>>
>> On Tue, Jan 19, 2016 at 6:39 PM, [redacted] <[redacted]> wrote:
>>
>>> Because you were not available to meet me in person last year and at this point I don't need to be seen. I can not have press, media, private investigators, film companies, etc. contacting me or my parents and sisters at home or on cell/texts and or by mail. I realize you don't have much control over this, but you can at least help me to move. I can't just get up and go like you. I left the city to escape, make a better life and I am devastated these people found me and brought to light an association of that I would rather them never to know. People think I was involved with something really bad and I lost a boyfriend of great potential over this shit. I am still in debt over all these years, been working my ass off trying to get ahead, which you could never understand I was even surviving off the pay I was getting. Well, its not any better. I dropped out of college because of you (and GM's) advice. Started working for a company you wanted me to and basically my life has has become hell since then.
>>>
>>> I have been your supporter for 16 years, the media explosion with Clinton, Trump and Cosby is affecting me. I'm not prepared for this.
>>
>> --
>> please note
>> The information contained in this communication is confidential, may be attorney-client privileged, may constitute inside information, and is intended only for the use of the addressee. It is the property of [redacted] Unauthorized use, disclosure or copying of this communication or any part thereof is strictly prohibited and may be unlawful. If you have received this communication in error, please notify us immediately by return e-mail or by e-mail to [redacted], and destroy this communication and all copies thereof, including all attachments. copyright -all rights reserved

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From: jeffrey E. <jeevacation@gmail.com>
Sent: Thursday, January 21, 2016 1:43 AM
To: [redacted]
Subject: Re: Help!

Importance: High

what do you suggest?

On Wed, Jan 20, 2016 at 7:19 PM, [redacted] <[redacted]> wrote:

> Happy birthday, I remember the few I had spent with you, good memories!
>
> The problem is that you may appreciate my support but that doesn't help me. Yes, I told you I can't have people coming here to ask about you and ex pals.... My landlord may shoot them. He is pissed. I need your help. Out of all the people you should be helping is someone who actually genuinely cared about you.i realize you're living the good life and I'm not your concern, but if you really appreciated my support then you'd help me otherwise I don't know what I'll do.
>
> On Wednesday, January 20, 2016, jeffrey E. <jeevacation@gmail.com> wrote:
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>> i appreciate your support is what i meant. has anyting happened recently? it is my birthday today
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>>>>> Because you were not available to meet me in person last year and at this point I don't need to be seen. I can not have press, media, private investigators, film companies, etc. contacting me or my parents and sisters at home or on cell/texts and or by mail. I realize you don't have much control over this, but you can at least help me to move. I can't just get up and go like you. I left the city to escape, make a better life and I am devastated these people found me and brought to light an association of that I would rather them never to know. People think I was involved with something really bad and I lost a boyfriend of great potential over this shit. I am still in debt over all these years, been working my ass off trying to get ahead, which you could never understand I was even surviving off the pay I was getting. Well, its not any better. I dropped out of college because of you (and GM's) advice. Started working for a company you wanted me to and basically my life has has become hell since then.
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From: jeffrey E. [jeevacation@gmail.com]
Sent: 5/24/2017 11:04:43 PM
To: Matthew Hiltzik [redacted]
Subject: Fwd: Fw: inquiry re: Giuffre v Maxwell settlement
Attachments: image001.png

Privileged - Redacted

---------- Forwarded message ----------
From: **Martin G. Weinberg** [redacted]
Date: Wed, May 24, 2017 at 6:53 PM
Subject: Fw: inquiry re: Giuffre v Maxwell settlement
To: jeevacation@gmail.com, [redacted], [redacted]

Privileged - Redacted

From: Hill, James E.
Sent: Wednesday, May 24, 2017 6:33 PM
To:[redacted]
Subject: inquiry re: Giuffre v Maxwell settlement

Good afternoon, Marty:

This is James Hill at ABC News.

Do you have any statement you wish to share on behalf of Mr. Epstein regarding the settlement reached in the defamation suit filed by Virginia Giuffre v. Ghislaine Maxwell?

I know from the court filings and hearing transcripts, that Mr. Epstein was deposed in this action, but was not expected to be called as a live trial witness.

According to the transcripts - it was represented by plaintiff's counsel during pre-trial hearings, that Mr. Epstein invoked his 5th amendment rights and declined to answer substantive questions during the deposition. It also appears that Judge Sweet had not yet made a final determination as to whether Mr. Epstein's depo, or selected portions thereof, would be admitted at trial (which is obviously a moot point, now).

If you believe any of that to be in error, and/or if you wish to provide a statement about the settlement or in response to Giuffre's allegations about your client, please give me a call or reply to this email.

If you have no comment, I'd appreciate you letting me know that.

Thanks

James

James Hill
Sr. Producer
ABC News
190 N. State St.
Chicago IL 60601
[redacted] (cell)
(cell)
(ofc)
james.e.hill@abc.com
@jameshillabc

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From: jeffrey E. [jeevacation@gmail.com]
Sent: 11/7/2017 10:35:08 AM
To: Michael Wolff [[redacted]]
Subject: boies

http://people.com/movies/harvey-weinstein-hired-intelligence-agencies-to-spy-on-accusers-rose-mcgowan/

right on time, i didnt know. boies is his co counsel. . represents [redacted] that claims that al gore , and clinton were both on the island. he knows its not true , or could clearly ask hif former clients.

--
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From: jeffrey E. [jeevacation@gmail.com]
Sent: 11/7/2017 10:42:23 AM
To: Landon Thomas [redacted]

Importance: High

http://people.com/movies/harvey-weinstein-hired-intelligence-agencies-to-spy-on-accusers-rose-mcgowan/ the same boies that represents [redacted]. who makes totally fabricated claims re gore and clinton - boies clients. he refuses to ask them their version of events. They were never on the island and though she gave details of a dinnner. I have never ever met al gore or his wife.

boies is going to be in the firiing line. from the biz view he represented Hank Greenburg AIG, , his fees were never paid as the appeals court overturned the win. but AIG as an insurance co. -- ... phone only

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From: jeffrey E. [jeevacation@gmail.com]
Sent: 11/7/2017 2:55:20 PM
To: Thomas Jr., Landon [redacted]
Subject: Re:

Importance: High

As they are both bulkshitters

On Tue, Nov 7, 2017 at 10:26 AM Thomas Jr., Landon <[redacted]> wrote:

> i am more interested in al-waleed/saudi purge/Jared axis. al-waleed and prez go back a ways don't they?
>
> On Tue, Nov 7, 2017 at 5:42 AM, jeffrey E. <jeevacation@gmail.com> wrote:
>
>> http://people.com/movies/harvey-weinstein-hired-intelligence-agencies-to-spy-on-accusers-rose-mcgowan/ the same boies that represents [redacted]. who makes totally fabricated claims re gore and clinton - boies clients. he refuses to ask them their version of events. They were never on the island and though she gave details of a dinnner. I have never ever met al gore or his wife.
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>
> --
> Landon Thomas, Jr.
> Financial Reporter
> New York Times
> [redacted]
> http://topics.nytimes.com/top/reference/timestopics/people/t/landon_jr_thomas/index.html

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From: jeffrey E. [jeevacation@gmail.com]
Sent: 11/7/2017 3:10:06 PM
To: Thomas Jr., Landon [[redacted]]
Subject: Re:

Importance: High

All. With gods help ;)

On Tue, Nov 7, 2017 at 11:00 AM Thomas Jr., Landon <[redacted]> wrote:

> Did your Saudi friends survive the purge?
>
> On Tue, Nov 7, 2017 at 9:55 AM, jeffrey E. <jeevacation@gmail.com> wrote:
>
> > As they are both bulkshitters
> >
> > On Tue, Nov 7, 2017 at 10:26 AM Thomas Jr., Landon <[redacted]> wrote:
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> > > --
> > > Landon Thomas, Jr.
> > > Financial Reporter
> > > New York Times

>> [redacted]
>> http://topics.nytimes.com/top/reference/timestopics/people/t/landon_jr_thomas/index.html
>
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> --
> Landon Thomas, Jr.
> Financial Reporter
> New York Times
> [redacted]
> http://topics.nytimes.com/top/reference/timestopics/people/t/landon_jr_thomas/index.html

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From: jeffrey E. [jeevacation@gmail.com]
Sent: 11/8/2017 1:49:52 PM
To: Thomas Jr., Landon[redacted]
Subject: Re:

MONEY!!!! he lost the fee for hank greenburg, and needed money for his firm. if you look into boies and AIG you will find the answer

On Wed, Nov 8, 2017 at 8:48 AM, Thomas Jr., Landon <[redacted]> wrote:

> Re Boies, Voila. https://www.nytimes.com/2017/11/07/business/weinstein-lawyer-david-boies.html. Unclear to me why he is getting involved with you....
>
> On Tue, Nov 7, 2017 at 10:10 AM, jeffrey E. <jeevacation@gmail.com> wrote:
>
> > All. With gods help ;)
> >
> > On Tue, Nov 7, 2017 at 11:00 AM Thomas Jr., Landon <[redacted]> wrote:
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